The price for each Volume is £1 5s., cloth, net;
or £1 8s., half brown calf, net.

THE REVISED REPORTS

TABLE OF COMPARATIVE REFERENCE

OF THE

OLD REPORTS contained in the REVISED REPORTS, Vols. 1 to 44.

OLD REPORTS. CASES FROM	*REVISED REPORTS,* CITED AS R. R. *vide* **R. R.** vols.
Adolphus & Ellis. Vols. 1 to 8	,,40 to 45, 47
Anstruther. 3 vols.	,, 3 & 4
Ball & Beatty. 2 vols.	,, 12
Barnewall & Adolphus. Vols. 1 to 5	,, 35 to 39
Barnewall & Alderson. 5 vols.	,, 18 to 24
Barnewall & Cresswell. 10 vols.	,, 25 to 35
Bingham. 10 vols.	,,25,27 to 35, 38
Bingham, N. C. Vols. 1 to 4	,, 41 to 44
Blackstone, H. 2 vols.	,, 2 & 3
Bligh. 4 vols.	,, 20 to 22
Bligh N. S. Vols. 1 to 10	,,30 to 36,38, 39, 42
Bosanquet & Puller. 5 vols.	,, 4 to 9
Broderip & Bingham. 3 vols.	,, 21 to 24
Campbell. 4 vols.	,, 10 to 16
Carrington & Payne. Vols. 1 to 6	,,28 to 34,38,40
Chitty. 2 vols.	,, 22 & 23
Clark & Finnelly. Vols. 1 to 5	,,36,37,39,42,47
Cooper, G.	,, 14
Cooper temp. Brougham	,, 38
Cooper Pr. Cas.	,, 46
Cox. 2 vols.	,, 1 & 2
Crompton & Jervis. Vols. 1 & 2	,, 35 & 37
Crompton & Meeson. 2 vols.	,, 38, 39
Crompton, Meeson & R. 2 vols.	,, 40, 41
Daniell	,, 18
Danson & Lloyd	,, 34
Dow. 6 vols.	,, 14 to 16 & 19
Dow & Clark. 2 vols.	,, 35
Dowling, P. C. Vols. 1 to 4	,,36,39,41,46
Dowling & Ryland's K. B. 9 vols.	,, 24 to 30
Dowling & Ryland's N. P.	,, 25
Durnford & East. 8 vols.	,, 1 to 5
East. 16 vols.	,, 5 to 14
Espinasse. 6 vols.	,, 5, 6, 8, 9
Forrest	,, 5
Gow	,, 21
Haggard's Adm. 3 vols.	,, 33 & 35
Harrison-Wollaston. 2 vols.	,, 47
Hodges. 3 vols.	,, 42 & 43
Hogan. 2 vols.	,, 34
Holt	,, 17
Jacob	,, 23
Jacob & Walker. 2 vols.	,, 20 to 22
Keen. 2 vols.	,, 44
Knapp. 3 vols.	, 38, 40

OLD REPORTS. CASES FROM	*REVISED REPORTS.* CITED AS R. R. *vide* **R. R.** vols.
Law Journal, O. S. 9 Vols.	,, 25 to 34
Law Journal, N. S. Vols. 1 to 5	,,36, 37, 39, 41, 42
Lloyd & Welsby	,, 35
McClelland	,, 28
McClelland & Younge	,, 29
Maddock. 6 vols.	,, 15 to 18 & 20 to 23
Manning & Ryland. 5 vols.	,, 31 to 34
Marshall. 2 vols.	,, 15 & 17
Maule & Selwyn. 6 vols.	,, 14 to 18
Meeson & Welsby. Vols. 1 & 2	,, 46
Merivale. 3 vols.	,, 15 to 17
Moody & Malkin	,, 31
Moody & Robinson. Vol. 1	,, 42
Moore, C. P. 12 vols.	,, 19 to 29
Moore P.C. Vols. 1 & 2	,, 43, 46
Moore & Payne. 5 vols.	,, 29 to 31,33
Moore & Scott. 4 vols.	,, 34, 35, 38
Mylne & Craig. Vols. 1 to 3	,, 43, 45
Mylne & Keene. 3 vols.	,, 36, 41
Nevile & Manning. 6 vols.	,, 38 to 43
Nevile & Perry. Vol. 1	,, 44
Peake. 2 vols.	,, 3 & 4
Price. Vols. 1 to 12	,, 15 to 26
Russell. 5 vols.	,, 25 to 29
Russell & Mylne. 2 vols.	,, 32 & 34
Russell & Ryan	,, 15
Ryan & Moody	,, 27
Schoales & Lefroy. 2 vols.	,, 9
Scott. Vols. 1 to 5	,, 41 to 44
Simons. Vols. 1 to 9	,, 27, 29, 30, 33, 35, 38, 40, 42, 47
Simons & Stuart. 2 vols	,, 24 & 25
Smith. 3 vols.	,, 7 & 8
Starkie. 3 vols.	,,18 to 20,23
Swanston. 3 vols.	,, 18 & 19
Tamlyn	,, 31
Taunton. 8 vols.	,, 9 to 21
Turner & Russell	,, 23 & 24
Tyrwhitt. 5 vols.	,,35,37 to 40
Tyrwhitt & Granger.	,, 46
Vesey, Jr. 19 vols.	,, 1 to 13
Vesey & Beames. 3 vols.	,, 12 & 13
Wightwick	,, 12
Wilson's Chy.	,, 18
Wilson's Ex. Eq.	,, 18
Young & Collier. Vols. 1 & 2	,,
Younge	,,
Younge & Jervis. 3 vols.	,,

GILBERT & FI
BOOKSELLE
67, MOORGATE ST
LONDON, I

0' 40

LAW BOOKS

PUBLISHED BY

SWEET & MAXWELL, LIMITED,

3, CHANCERY LANE, LONDON.

ENCYCLOPÆDIA OF THE LAWS OF ENGLAND,

BY THE MOST EMINENT LIVING AUTHORITIES.

12 Volumes.

In cloth, £12 net. In half-calf, £14 net.

For full Prospectus and Names of Contributors apply to

SWEET & MAXWELL, LTD., 3, CHANCERY LANE, LONDON.

Agency.—BOWSTEAD'S (W.) Digest of the Law of Agency. 2nd Edit. 16*s*. 1898.

Annual Practice.—By T. SNOW, M.A., Barrister-at-Law, CHARLES BURNEY, B.A., a Master of the Supreme Court, and F. A. STRINGER, of the Central Office, Royal Courts of Justice. 25*s*. net.

Arbitration and Award.—RUSSELL'S (F.) Treatise on Power and Duty of an Arbitrator; with Forms and Statutes. 8th Edit. 30*s*. 1900.

Attachment.—CABABÉ on Attachment of Debts, Receivers, and Charging Orders. 3rd Edit. 6*s*. 1900.

Auctions.—BATEMAN'S Auctioneer's Guide, containing a practical Treatise on the Law of Auctions; with Forms and Precedents. 7th Edit. 12*s*. 1894.

Bankrupt Law.—WILLIAMS' Law and Practice in Bankruptcy. 7th Edit. By E. W. HANSELL. 30*s*. 1898.

Reports of Cases in Bankruptcy under the Bankruptcy Act, 1883-1890. Decided in the High Court of Justice and the Court of Appeal. By C. F. MORRELL. Complete in 10 vols., 18*s*. each, cloth. 1884-93. Continued by Manson's Bankruptcy and Company (Winding-up) Reports. By EDWARD MANSON. At an Annual Prepaid Subscription of 20*s*.

Bills of Exchange.—BYLES on Bills of Exchange. 16th Ed. By M. B. BYLES and W. J. B. BYLES. 25*s*. 1899.

Building Societies.—DAVIS'S (H. F. A.) Law of Building and Freehold Land Societies in England, Scotland and Ireland, &c. 4th Edit. By J. E. WALKER. 21*s*. 1896.

Burials.—BAKER'S Law of Burials. 6th Edit. By E. L. THOMAS. 25*s*. 1901.

Children.—The Law relating to Children and Young Persons. By J. B. MATTHEWS. 10*s*. 6*d*. 1894.

Claims in Action.—Warren's Law re[illegible]s in Action. By. W. R. [illegible]. 1899.

Common Law.—CHITTY'S Forms of Practical Proceedings in the Queen's Bench Division of the High Court of Justice. 13th Edit. By T. W. CHITTY.

In Preparation.

BROOM'S Commentaries on the Common Law. 9th Edit. By W. F. A. ARCHIBALD and H. A. COLEFAX. 25*s*. 1896.

Companies.—LINDLEY. A Treatise on the Law and Practice of Joint Stock and other Companies. With a Supplement containing the Companies Acts, 1890. By the Right Hon. Sir N. LINDLEY, Knt., Master of the Rolls. 5th Edit. In 1 vol. 2*l*. 10*s*. 1891.

CHADWYCK HEALEY. A Treatise on the Law and Practice relating to Joint Stock Companies, with Forms and Precedents. 3rd Ed. By C. E. H. CHADWYCK HEALEY. 2*l*. 1894.

Conflict of Laws.—A Digest of the Law of England with reference to the Conflict of Laws. By A. V. DICEY, Q.C., B.C.L., etc. 30*s*. 1896.

Contracts.—CHITTY'S (J., jun.) Treatise on the Law of Contracts. 13th Ed. By J. M. LELY. 30*s*. 1896.

The Specific Performance of Contracts. By W. D. RAWLINS, Q.C. 5*s*. net. 1899.

Conveyancing.—BYTHEWOOD and JARMAN'S Precedents in Conveyancing. 4th Edition. By L. G. G. ROBBINS. Now completed in 8 vols. Royal 8vo. Reduced to 5*l*. net. 1885-93.

DAVIDSON'S Concise Precedents in Conveyancing. 17th Edit. By M. G. DAVIDSON. 21*s*. 1899.

Practical Introduction to Conveyancing. By Sir H. W. ELPHINSTONE. 5th ed. 14*s*. 1900.

KEY and ELPHINSTONE'S Precedents and Forms in Conveyancing. 6th Ed. 3*l*. 10*s*. 1899.

Student's Precedents in. By JAMES W. CLARK, M.A. 2nd Ed. 5*s*. 1896.

Coroners.—JERVIS (Sir J.) on the Office and Duties of Coroners. 6th Edit. By R. E. MELSHEIMER. 10*s*. 6*d*. 1898.

W.B.CLARKE CO.
BOOKSELLERS & STATIONERS
26 & 28 TREMONT ST. &
30 COURT SQ., BOSTON.

10/- Scrip

THE LAW

RELATING TO

WORKMEN'S COMPENSATION

UNDER THE

WORKMEN'S COMPENSATION ACTS 1897 & 1900.

WITH AN APPENDIX

CONTAINING THE

RULES, REGULATIONS, AND ORDERS UNDER THE ACTS, AND FORMS.

BY

WILLIAM BOWSTEAD

OF THE MIDDLE TEMPLE AND SOUTH EASTERN CIRCUIT, BARRISTER-AT-LAW.
AUTHOR OF "A DIGEST OF THE LAW OF AGENCY."

LONDON:
SWEET AND MAXWELL, LIMITED,
3, CHANCERY LANE, W.C.
1901.

HD7816
.G7B6

147057

BRADBURY, AGNEW, & CO. LD., PRINTERS,
LONDON AND TONBRIDGE.

PREFACE.

In writing this book I have adopted the plan, as being the most convenient, having regard to the nature of the subject, of setting out the sections of the Workmen's Compensation Acts, and discussing in notes to each section the points arising, and the effect of the various cases decided, of which there are a large number.

I have referred to the Scotch and Irish cases, as well as those decided in England and Wales, and think it will be found that every case reported down to the end of October has been included. The alterations made by the Factory and Workshop Act of 1901, which are of considerable importance, and which take effect as from the 1st of January next, have also been duly noted.

The Statutory Rules and Orders made under the Act, and Forms, are set out in the Appendix, and

also the Treasury Regulations as to Medical Referees, and the Rules of the Supreme Court relating to appeals to the Court of Appeal.

A very full and comprehensive Index has been added to the work.

W. BOWSTEAD.

November, 1901.

TABLE OF CONTENTS.

PAGE

PREFACE . . . . . iii.
TABLE OF CASES . . . . . ix.
TABLE OF STATUTES . . . . . xvii.

INTRODUCTION 1
WORKMEN'S COMPENSATION ACT, 1897.
Sect. 1 (1). Liability of certain employers to workmen for injuries . 7
Injury by accident, meaning of 8
Arising out of and in course of employment . 12
(2) (*a*). Disability for two weeks 20
(*b*). Choice of remedies 22
(*c*). Serious and wilful misconduct 24
(3). Questions to be determined by arbitration . . . 27
Settlement by agreement 28
Procedure in arbitrations 29
Matters to be determined 30
The arbitration tribunal 31
Arbitrations in the County Court . . . 33
The parties 34
Application for arbitration 34
Fixing day and place 35
Answer by respondents 36
Submission and payment into Court . . 37
Arbitrator appointed by the Judge . . . 39
(4). Compensation after unsuccessful action . . . 41
(5). Saving for statutory penalties 43
2. Time for taking proceedings 44
Form and requisites of notice of accident . . . 45
Within what time notice to be given . . . 46
Want of or defect in notice 47
Limit of time for proceedings 47
Meaning of claim for compensation 48
Estoppel from setting up time limit 49

PAGE

WORKMEN'S COMPENSATION ACT, 1897—*continued.*

Sect. 3. Contracting out 50
4. Sub-contracting 52
Right of indemnity 54
"Merely ancillary or incidental" 55
Procedure on claim for indemnity 57
5. Bankruptcy or insolvency of employer 59
Applications against insurers 59
6. Recovery of damages from stranger 61
Election of remedies 61
Right of indemnity 62
7 (1). Application of Act 63
Employment by undertakers 63
"On, in or about" 64
Building which exceeds 30 feet in height . . . 68
"Being constructed or repaired." "Scaffolding" . 70
(2). Definitions 74
"Railway" 74
"Factory" 76
Docks, wharves, quays and warehouses . . . 84
"Wharf" 90
"Warehouse" 90
"On, in or about" a dock, wharf or quay . . . 91
Machinery and plant 94
"On, in or about" machinery or plant . . . 96
"Mine" 97
"Quarry" 98
"Engineering work" 99
"Undertakers" 101
of factory, quarry, or laundry 101
of dock, wharf or quay 102
of machinery or plant 104
of a mine 105
of a building 105
"Employer" 107
"Workman" 107
Seamen 109
"Dependants" 110
What is dependency? 111
"Shipbuilding yard" 115
8. Workmen in employment of Crown 116
9. Provision as to existing contracts 117
10. Commencement of Act and short title 117
Sched. I. (1, 2). Scale of compensation 118

PAGE

WORKMEN'S COMPENSATION ACT, 1897—*continued.*

Sched. I. (1, 2). Scale of compensation—*continued.*

Compensation in case of death . . . 119
In case of total or partial incapacity . 123
"Average weekly earnings" . . . 126
Employment for less than two weeks . . 129
"Earnings" in employment of same employer 130
(3). Medical examination of workman . . . 132
(4). Payment of compensation in case of death . 133
(5). Questions as to dependants, how settled . . 134
(6)–(10). Investment of sums allotted to dependants . 135
(11). Medical examination of workmen in receipt of weekly payments 136
(12). Review of weekly payment 137
(13). Redemption of weekly payment . . . 138
(14). Protection of weekly payment 139
(15). Payment by friendly society 139
(16). Application of Schedule to Scotland . . 140
(17). Application of Schedule to Ireland . . . 140
Sched. II. (1)–(3). The arbitration tribunal 141
(4). Powers of arbitrator, submission of questions of law and appeals 142, 143
Security for costs of appeal 144
(5). Appearance of parties in arbitrations . . 144
(6). Costs of and incident to arbitration . . . 145
(7). Appointment of new arbitrator . . . 147
(8). Recording and enforcement of memorandum of agreement, award, or certificate . . 148
(9). District in which proceedings to be taken, and transfer of proceedings 151
(10). Making of Rules of Court 152
(11). No Court fee prior to award 152
(12). Costs of solicitor or agent of workmen or dependants 152
(13). Appointment of, and references to medical referees 154
(14)–(15). Application of Schedule to Scotland . . 155
(16). Application of Schedule to Ireland . . . 157

WORKMEN'S COMPENSATION ACT, 1900.

Extension of Act of 1897 to workmen in agriculture . . . 158
Sub-contracting 160

PAGE

APPENDIX.

A. Statutory Rules and Orders under the Workmen's Compensation Acts, 1897 and 1900 162

Explanatory memorandum to the Workmen's Compensation Rules, 1898 162

Explanatory memorandum to the Workmen's Compensation Rules, 1900 174

The Workmen's Compensation Rules, 1898 to 1900 . . . 177

Forms thereunder 223

B. Rules of the Supreme Court as to appeals 259

C. Treasury regulations relating to medical referees . . . 261

Forms thereunder 267

D. Forms of notice of accident 271

E. Employers' Liability Act, 1880 272

TABLE OF CASES.

PAGE

ABERDEEN Steam Trawling Co. *v.* Peters, 1899, 1 Fraser, 786; 36 Sc. L. R. 573, C. of Sess. 95

Abernethy *v.* Low (*see* Low *v.* Abernethy).

Appleby *v.* Horseley Co., [1899] 2 Q. B. 521; 68 L. J. Q. B. 892; 80 L. T. 853; 47 W. R. 614; 15 T. L. R. 410, C. A. . . 58, 126

BAILEY *v.* Plant (No. 1), 1901, 1 K. B. 31; 70 L. J. K. B. 63; 83 L. T. 459; 49 W. R. 10 ; 17 T. L. R. 48, C. A. . . 150

—— *v.* Plant (No. 2), 1901, 17 T. L. R. 449, C. A. 150

Baird *v.* Higginbotham, 1901, 38 Sc. L. R. 479, C. of Sess. . . . 42

Barclay *v.* M'Kinnon, 1901, 3 Fraser, 436 ; 38 Sc. L. R. 321, C. of Sess. 66

—— *v.* M'Millan, 1899, 2 Fraser, 91 ; 37 Sc. L. R. 61, C. of Sess. . 116

Barrett *v.* North British Rail. Co., 1899, 1 Fraser, 1139; 36 Sc. L. R. 874, C. of Sess. 111

Bee *v.* Ovens, 1900, 2 Fraser, 439 ; 37 Sc. L. R. 328, C. of Sess. . 57

Bell *v.* Whitton, 1899, 1 Fraser, 942 ; 36 Sc. L. R. 754, C. of Sess. . 65

Bennett *v.* Wordie, 1899, 1 Fraser, 855 ; 36 Sc. L. R. 643, C. of Sess. 48

Berwickshire County Council *v.* Middlemiss (*see* Middlemiss *v.* Berwickshire County Council).

Billings *v.* Holloway, [1899] 1 Q. B. 70 ; 68 L. J. Q. B. 16 ; 79 L. T. 396 ; 47 W. R. 105 ; 15 T. L. R. 53, C. A. 68

Blair *v.* Dundalk, &c., Packet Co., 1899, 33 Ir. L. T. R. 132, C. A. Ir. 94

Boase Spinning Co. *v.* M'Avan, 1901, 38 Sc. L. R. 772, C. of Sess. . 137

Brennan *v.* Dublin United Tram. Co., [1901] 2 Ir. R. 241, C. A. Ir. 55

Brodie *v.* North British Rail. Co., 1900, 3 Fraser, 75 ; 38 Sc. L. R. 38, C. of Sess. 66, 75

Brown *v.* Herriot, 1899, 33 Ir. L. T. R. 123, C. A. Ir. . 83, 92, 116

Bruce *v.* Henry, 1900, 2 Fraser, 717; 37 Sc. L. R. 511, C. of Sess. 88, 103, 104

Brydon *v.* Stewart, 1855, 2 Macq. 30, H. L. 16

Burns *v.* North British Rail. Co., 1900, 2 Fraser, 629; 37 Sc. L. R. 448, C. of Sess. 56, 76

PAGE

Cadzow Coal Co. *v.* Gaffney, 1900, 3 Fraser, 72; 38 Sc. L. R. 40, C. of Sess. 130
Caledonian Rail. Co. *v.* Breslin, 1900, 2 Fraser, 1158; 37 Sc. L. R. 873, C. of Sess. 76
Callaghan *v.* Maxwell, 1900, 2 Fraser, 420; 37 Sc. L. R. 313, C. of Sess. 13, 27
Campbell *v.* Caledonian Rail. Co., 1899, 1 Fraser, 887; 36 Sc. L. R. 699, C. of Sess. 23
Carrington *v.* Bannister, [1901] 1 K. B. 20; 70 L. J. K. B. 31; 83 L. T. 457, C. A. 104
Carter *v.* Drysdale, 1883, 12 Q. B. D. 91; 53 L. J. Q. B. 557; 32 W. R. 171 47
Cass *v.* Butler, [1900] 1 Q. B. 777; 69 L. J. Q. B. 362; 82 L. T. 182; 48 W. R. 309; 64 J. P. 261; 16 T. L. R. 227, C. A. 8, 54, 106
Chambers *v.* Whitehaven Harbour Commissioners, [1899] 2 Q. B. 132; 68 L. J. Q. B. 740; 80 L. T. 586; 47 W. R. 533; 15 T. L. R. 341, C. A. 65, 100, 110
Chandler *v.* Smith, [1899] 2 Q. B. 506; 68 L. J. Q. B. 909; 81 L. T. 317; 47 W. R. 677; 15 T. L. R. 480, C. A. . 20, 21, 123, 124
Clarke *v.* Carfin Coal Co., [1891] A. C. 412, H. L. 111
Clarkson *v.* Musgrave, 1882, 9 Q. B. D. 386; 51 L. J. Q. B. 525; 31 W. R. 47 . . . . . 46, 47
Clement *v.* Bell, 1899, 1 Fraser, 924, C. of Sess. 111
Cochrane *v.* Traill (No. 1), 1900, 2 Fraser, 794, C. of Sess. . . . 28, 149
—— *v.* Traill (No. 2), 1900, 3 Fraser, 27; 38 Sc. L. R. 18, C. of Sess. 149
—— *v.* Traill (No. 3), 1901, 38 Sc. L. R. 848, C. of Sess. 149
Cooper *v.* Davenport, 1900, 16 T. L. R. 266, C. A. . . 54, 58, 106
Cosgrove *v.* Anglo-American Oil Co., 1900, 34 Ir. L. T. R. 56, C. A. Ir. 67
—— *v.* Partington, 1901, 17 T. L. R. 39, C. A. 99
Cowler *v.* Moresby Coal Co., 1885, 1 T. L. R. 575, C. A. . . . 19
Crossfield *v.* Tanian, [1900] 2 Q. B. 629; 69 L. J. Q. B. 790; 82 L. T. 813; 48 W. R. 609; 16 T. L. R. 476, C. A. 138
Cunningham *v.* M'Gregor, 1901, 38 Sc. L. R. 574, C. of Sess. . . 114

Dailly *v.* Watson, 1900, 2 Fraser, 1044; 37 Sc. L. R. 782, C. of Sess. 25, 27
Dalton *v.* S. E. Rail. Co., 1857, 4 C. B. N. S. 296; 27 L. J. C. P. 227; 6 W. R. 574. 121
Daniel *v.* Ocean Coal Co., [1900] 2 Q. B. 250; 69 L. J. Q. B. 567; 82 L. T. 523; 48 W. R. 467; 64 J. P. 436; 16 T. L. R. 368, C. A. 134
Darling *v.* Gray, 1892, 19 R. (H. L.) 31, H. L. 111
Davies *v.* Main Colliery Co. (*see* Main Colliery Co. *v.* Davies).
—— *v.* Rhymney Iron Co., 1900, 16 T. L. R. 329, C. A. . . 17, 66

PAGE

Devine *v.* Caledonian Rail. Co., 1899, 1 Fraser, 1105 ; 36 Sc. L. R. 877, C. of Sess. 15, 64
Dornan *v.* Senior, 1900, 38 Sc. L. R. 70, C. of Sess. 28
Dredge *v.* Conway, [1901] 2 K. B. 42 ; 70 L. J. K. B. 494 ; 84 L. T. 345 ; 49 W. R. 518 ; 17 T. L. R. 355, C. A. 73
Dundee and Arbroath Rail. Co. *v.* Carlin, 1901, 38 Sc. L. R. 635, C. of Sess. 56
Dunlop *v.* M'Cready (*see* M'Cready *v.* Dunlop).
Durham *v.* Brown, 1898, 1 Fraser, 279 ; 36 Sc. L. R. 190, C. of Sess. 12, 15
Durrie *v.* Warren, 1899, 15 T. L. R. 365, C. A. 92, 95

Edwards *v.* Godfrey, [1899] 2 Q. B. 333 ; 68 L. J. Q. B. 666 ; 80 L. T. 672 ; 47 W. R. 551 ; 15 T. L. R. 365, C. A. . . 23, 42
Eisten *v.* North British Rail. Co., 1870, 8 M. 980, C. of Sess. . . 111

Fagan *v.* Murdoch, 1899, 1 Fraser, 1179 ; 36 Sc. L. R. 921, C. of Sess. 112, 120
Falconer *v.* London and Glasgow Engineering Co. *see* London and Glasgow Engineering Co. *v.* Falconer).
Fenn *v.* Miller, [1900] 1 Q. B. 788 ; 69 L. J. Q. B. 439 ; 82 L. T. 284 ; 48 W. R. 369 ; 64 J. P. 356 ; 16 T. L. R. 265, C. A. . . 65, 67
Ferguson *v.* Green, [1901] 1 K. B. 25 ; 70 L. J. K. B. 21 ; 83 L. T. 461 ; 49 W. R. 105 ; 17 T. L. R. 41, C. A. 71
Flowers *v.* Chambers, [1899] 2 Q. B. 142 ; 68 L. J. Q. B. 648 ; 80 L. T. 834 ; 47 W. R. 513 ; 15 T. L. R. 352, C. A. . . . 91, 94
Forrester *v.* M'Callum, 1901, 38 Sc. L. R. 448, C. of Sess. . . . 120
Francis *v.* Turner, [1900] 1 Q. B. 478 ; 69 L. J. Q. B. 182 ; 81 L. T. 770 ; 48 W. R. 228 ; 64 J. P. 53 ; 16 T. L. R. 105, C. A. . 8, 63, 101
Freeland *v.* Macfarlane, 1900, 2 Fraser, 832 ; 37 Sc. L. R. 599, C. of Sess. 21, 124
Frid *v.* Fenton, 1900, 82 L. T. 193 ; 69 L. J. Q. B. 436 ; 16 T. L. R. 267, C. A. 74
Fullerton *v.* Logue, 1901, 38 Sc. L. R. 738, C. of Sess. . . . 26
Fullick *v.* Evans, 1901, 84 L. T. 413 ; 17 T. L. R. 346, C. A. . . 100

Geary *v.* Dixon, 1899, 36 Sc. L. R. 640, C. of Sess. 125
Gibson *v.* Wilson, 1901, 38 Sc. L. R. 450, C. of Sess. 18
Glasgow and S. W. Rail. Co. *v.* Laidlaw, 1900, 2 Fraser, 708 ; 37 Sc. L. R. 503, C. of Sess. 26
Grand Trunk Rail. Co. *v.* Jennings, 1888, 13 A. C. 800, H. L. . . 122
Great North of Scotland Rail. Co. *v.* Fraser, 1901, 38 Sc. L. R. 653 ; C. of Sess. 21, 49, 125
Greenhill *v.* Caledonian Rail. Co., 1900, 2 Fraser, 736 ; 37 Sc. L. R. 524 ; C. of Sess. 56
Guthrie *v.* Boase Spinning Co., 1901, 38 Sc. L. R. 483, C. of Sess. . 26

PAGE

Haddock *v.* Humphrey, [1900], 1 Q. B. 609 ; 69 L. J. Q. B. 327 ; 82 L. T. 72 ; 48 W. R. 292 ; 64 J. P. 86 ; 16 T. L. R. 143, C. A. . 90
Hall *v.* Snowden, [1899] 2 Q. B. 136 ; 68 L. J. Q. B. 645 ; 80 L. T. 554 ; 47 W. R. 486 ; 15 T. L. R. 326, C. A. . . . 86, 88, 89
—— *v.* Snowdon, [1899] 1 Q. B. 593 ; 68 L. J. Q. B. 363 ; 47 W. R. 322 ; 15 T. L. R. 244, C. A. 144
Halstead *v.* Thomson, 1901, 38 Sc. L. R. 473, C. of Sess. . . 69, 74
Hamilton *v.* Pandorf, 1883, 12 A. C. 518, H. L. 8
Hanlin *v.* Melrose, 1899, 1 Fraser, 1012 ; 36 Sc. L. R. 814, C. of Sess. 111
Harrison *v.* Whitaker, 1899, 64 J. P. 54 ; 16 T. L. R. 108, C. A. 13, 27
Harwood, *In re*, [1901] 2 K. B. 304, C. A. 144
Hathaway *v.* Argus Printing Co., [1901] 1 K. B. 96 ; 70 L. J. K. B. 12 ; 83 L. T. 465 ; 49 W. R. 113 ; 17 T. L. R 42, C. A. . . 131
Healy *v.* Macgregor, 1900, 2 Fraser, 634 ; 37 Sc. L. R. 454, C. of Sess. 88, 95
Henderson *v.* Glasgow Corporation, 1900, 2 Fraser, 1127 ; 37 Sc. L. R. 857, C. of Sess. 42, 82
Hennessey *v.* McCabe, [1900] 1 Q. B. 491 ; 69 L. J. Q. B. 173 ; 81 L. T. 575 ; 48 W. R. 231 ; 64 J. P. 4 ; 16 T. L. R. 77, C. A. . 94
Hensey *v.* White, [1900] 1 Q. B. 481 ; 69 L. J. Q. B. 188 ; 81 L. T. 767 ; 48 W. R. 257 ; 16 T. L. R. 64, C. A. . . . 8, 9, 10, 11
Hewlett *v.* Hepburn, 1899, 16 T. L. R. 56, C. A. 127
Hicks *v.* Newport, &c., Rail. Co., 4 B. & S. 403, n. 122
Hobbs *v.* Bradley, 1900, 2 Fraser, 744 ; 37 Sc. L. R. 572, C. of Sess. 156
Hoddinott *v.* Newton, [1901] A. C. 49 ; 70 L. J. K. B. 150 ; 84 L. T. 1 ; 49 W. R. 380 ; 17 T. L. R. 134, H. L. ; reversing [1899] 1 Q. B. 1018 ; 68 L. J. Q. B. 495 ; 80 L. T. 558 ; 47 W. R. 499 ; 15 T. L. R. 299, C. A. 69, 71, 73
Holmes *v.* G. N. Rail Co., [1900] 2 Q. B. 409 ; 69 L. J. Q. B. 854 ; 83 L. T. 44 ; 48 W. R. 681 ; 16 T. L. R. 412, C. A. . . . 16
Holness *v.* Mackay, [1899] 2 Q. B. 319 ; 68 L. J. Q. B. 724 ; 80 L T. 831 ; 47 W. R. 531 ; 15 T. L. R. 351, C. A. 17
Houghton *v.* Sutton Heath, &c., Collieries Co., [1901] 1 K. B. 93 ; 70 L. J. K. B. 61 ; 83 L. T. 472 ; 49 W. R. 196 ; 17 T. L. R. 54, C. A. 131
Hubball *v.* Everitt, 1900, 16 T. L. R. 168, C. A. 144
Hunter *v.* Darngavil Coal Co., 1900, 38 Sc. L. R. 6, C. of Sess. . . 23

Illingworth *v.* Walmsley, [1900] 2 Q. B. 142 ; 69 L. J. Q. B. 519 ; 82 L. T. 647 ; 16 T. L. R. 281, C. A. 50, 125
Irons *v.* Davis, [1899] 2 Q. B. 330 ; 68 L. J. Q. B. 673 ; 80 L. T. 673 ; 47 W. R. 616, C. A. 123

Jackson *v.* Rodger, 1900, 2 Fraser, 533 ; 37 Sc. L. R. 390, C. of Sess. 88, 115

PAGE

Jones *v.* Ocean Coal Co., [1899] 2 Q. B. 124 ; 68 L. J. Q. B. 731 ; 80 L. T. 582 ; 47 W. R. 484, C. A. 126

Keast *v.* Barrow, &c., Steel Co., 1899, 63 J. P. 56 ; 15 T. L. R. 141, C. A. 128
Keen *v.* Millwall Dock Co., 1882, 8 Q. B. D. 482 ; 51 L. J. Q. B. 277 ; 46 L. T. 472 ; 30 W. R. 503 ; 46 J. P. 435, C. A. . . . 45
Kent *v.* Porter, 1901, 38 Sc. L. R. 482, C. of Sess. 66

Laing *v.* Young, 1900, 3 Fraser, 31 ; 38 Sc. L. R. 29, C. of Sess. 92, 94
Law *v.* Graham, 1901, 17 T. L. R. 474, C. A. 83
Lawrence *v.* Accident Ins. Co., 1881, 7 Q. B. D. 216 12
Lawson *v.* Atlantic Transport Co., 1900, 82 L. T. 77 ; 16 T. L. R. 181, C. A. 97
Leech *v.* Life and Health Ass. Assn., [1901] 1 K. B. 707 ; 70 L. J. K. B. 544 ; 84 L. T. 414 ; 49 W. R. 482 ; 17 T. L. R. 354, C. A. 61
Leonard *v.* Baird, 1901, 38 Sc. L. R. 649, C. of Sess. 120
Lewis *v.* G. W. Rail. Co., 1877, 3 Q. B. D. 195 ; 47 L. J. Q. B. 131 ; 37 L. T. 774 ; 26 W. R. 255, C. A. 24
Little *v.* MacLellan, 1900, 2 Fraser, 387 ; 37 Sc. L. R. 287, C. of Sess. 23, 42
Lloyd *v.* Sugg, [1900] 1 Q. B. 486 ; 69 L. J. Q. B. 190 ; 81 L. T. 768 ; 48 W. R. 257 ; 16 T. L. R. 65, C. A. 9, 11
London and Glasgow Engineering Co. *v.* Falconer, 1901, 38 Sc. L. R. 381 ; 3 Fraser, 564, C. of Sess. 16
Low *v.* Abernethy, 1900, 2 Fraser, 722 ; 37 Sc. L. R. 506, C. of Sess. 92, 103, 116
Lowe *v.* Pearson, [1899] 1 Q. B. 261 ; 68 L. J. Q. B. 122 ; 79 L. T. 654 ; 47 W. R. 193 ; 15 T. L. R. 124, C. A. . . . 14, 15, 27
Lowth *v.* Ibbotson, [1899] 1 Q. B. 1003 ; 68 L. J. Q. B. 465 ; 80 L. T. 341 ; 47 W. R. 506 ; 15 T. L. R. 264, C. A. 65
Lysons *v.* Knowles, [1901] A. C. 79 ; 70 L. J. K. B. 170 ; 84 L. T. 65 ; 49 W. R. 636 ; 17 T. L. R. 156, H. L. ; reversing [1900] 1 Q. B. 780, C. A. 20, 120, 129, 130, 131

M'Cready *v.* Dunlop, 1900, 2 Fraser, 1027 ; 37 Sc. L. R. 779, C. of Sess. 109
M'Donald *v.* Hobbs, 1899, 2 Fraser, 3 ; 37 Sc. L. R. 4, C. of Sess. . 71
M'Gregor *v.* Dansken, 1899, 1 Fraser, 536 ; 36 Sc. L. R. 393, C. of Sess. 105, 108
M'Kinnon *v.* Barclay, 1901, 38 Sc. L. R. 611, H. L. 157
M'Millan *v.* Barclay, 1899, 2 Fraser, 91, C. of Sess. 116
M'Lean *v.* Carse, 1899, 1 Fraser, 878 ; 36 Sc. L. R. 678, C. of Sess. . 47
McNicholas *v.* Dawson, [1899] 1 Q. B. 773 ; 68 L. J. Q. B. 470 ; 80 L. T. 317 ; 47 W. R. 500 ; 15 T. L. R. 242, C. A. . 15, 19, 24, 27, 96, 105

PAGE

M'Nicol *v.* Speirs, 1899, 1 Fraser, 604 ; 36 Sc. L. R. 428, C. of Sess. 16, 25
M'Quibban *v.* Menzies (*see* Menzies *v.* M'Quibban).
Main Colliery Co. *v.* Davies, [1900] A. C. 358 ; 69 L. J. Q. B. 755 ; 83 L. T. 83 ; 65 J. P. 20 ; 16 T. L. R. 460, H. L. . . . 112
Malcolm *v.* M'Millan, 1900, 2 Fraser, 525 ; 37 Sc. L. R. 383, C. of Sess. 8, 64
Marno *v.* Workman (No. 1), 1899, 33 Ir. L. T. R. 183, C. A. Ir. . 48
—— *v.* Workman (No. 2), 1899, 34 Ir. L. T. R. 14, C. A. Ir. . 29, 149
Mason *v.* Dean, [1900] 1 Q. B. 770 ; 69 L. J. Q. B. 358 ; 82 L. T. 139 ; 48 W. R. 353 ; 64 J. P. 244, C. A. 54, 106
Maude *v.* Brook, [1900] 1 Q. B. 575 ; 69 L. J. Q. B. 322 ; 82 L. T. 39 ; 48 W. R. 290 ; 64 J. P. 181 ; 16 T. L. R. 164, C. A. . . 71
Medd *v.* MacIver, 1899, 15 T. L. R. 364, C. A. 95
Mellor *v.* Tomkinson, [1899] 1 Q. B. 374 ; 68 L. J. Q. B. 214 ; 79 L. T. 715 ; 47 W. R. 240 ; 63 J. P. 55 ; 15 T. L. R. 142, C. A. . . 68
Menzies *v.* M'Quibban, 1900, 2 Fraser, 732 ; 37 Sc. L. R. 526, C. of Sess. 15
Merrill *v.* Wilson, [1901] 1 K. B. 35 ; 70 L. J. K. B. 97 ; 83 L. T. 490 ; 49 W. R. 161 ; 17 T. L. R. 49, C. A. . . 92, 94, 102, 104
Middlemiss *v.* Berwickshire County Council, 1900, 2 Fraser, 392 ; 37 Sc. L. R. 297, C. of Sess. 65, 99
Milner *v.* G. N. Rail. Co., [1900] 1 Q. B. 795 ; 69 L. J. Q. B. 427 ; 82 L. T. 187 ; 48 W. R. 387 ; 64 J. P. 291 ; 16 T. L. R. 249, C. A. 68, 76
Monaghan *v.* United Collieries, 1900, 3 Fraser, 149 ; 38 Sc. L. R. 92, C. of Sess. 67, 98
Mountain *v.* Parr, [1899] 1 Q. B. 805 ; 68 L. J. Q. B. 447 ; 80 L. T. 342 ; 47 W. R. 353 ; 15 L. T. 262, C. A. 40, 142
Moyle *v.* Jenkins, 1881, 8 Q. B. D. 116 ; 51 L. J. Q. B. 112 ; 46 L. T. 472 ; 30 W. R. 324. 45
Murnin *v.* Calderwood (No. 1), 1899, 1 Fraser, 634, C. of Sess. . . 157
—— *v.* Calderwood (No. 2), 1899, 1 Fraser, 862 ; 36 Sc. L. R. 648, C. of Sess. 68

Nash *v.* Hollinshead, [1901] 1 K. B. 700 ; 70 L. J. K. B. 571 ; 84 L. T. 483 ; 49 W. R. 424 ; 17 T. L. R. 352, C. A. . . . 82
Nelson *v.* Kerr, 1901, 38 Sc. L. R. 645, C. of Sess. . . . 130, 131
Noel *v.* Redruth Foundry Co., [1896] 1 Q. B. 453 . . . 124, 132

O'Donovan *v.* Cameron, 1900, 34 Ir. L. T. R. 169, C. A. Ir. . 115, 122
O'Hanlon *v.* Dundalk, &c., Steam Packet Co., 1899. 33 Ir. L. T. R. 36, C. A. Ir. 109
Osborn *v.* Vickers, [1900] 2 Q. B. 91 ; 69 L. J. Q. B. 606 ; 82 L. T. 491 ; 16 T. L. R. 333, C. A. 132
Osborne *v.* Barclay, [1901] A. C. 269, H. L. 157

Pearce *v.* L. & S. W. Rail. Co., [1900] 2 Q. B. 100 ; 69 L. J. Q. B. 683 ; 82 L. T. 487 ; 48 W. R. 599 ; 16 T. L. R. 336, C. A. . 55, 56

PAGE

Percival *v.* Garner, [1900] 2 Q. B. 406 ; 69 L. J. Q. B. 824 ; 64 J. P. 500, C. A. 105
Perry *v.* Clements, 1901, 17 T. L. R. 525 ; 49 W. R. 669, C. A. 23, 62
Petrie *v.* Weir, 1900, 2 Fraser, 1041 ; 37 Sc. L. R. 795, C. of Sess. . 83
Pomphrey *v.* Southwark Press, [1901] 1 K. B. 86 ; 70 L. J. K. B. 48 ; 83 L. T. 468 ; 17 T. L. R. 53, C. A. 124, 132, 138
Powell *v.* Brown, [1899] 1 Q. B. 157 ; 68 L. J. Q. B. 151 ; 79 L. T. 631 ; 47 W. R. 145 ; 15 T. L. R. 65, C. A. . . . 64
—— *v.* Main Colliery Co., [1900] A. C. 366 ; 69 L. J. Q. B. 758 ; 83 L. T. 85 ; 49 W. R. 49 ; 16 T. L. R. 466, H. L. ; reversing [1900] 2 Q. B. 145, C. A. 34, 48, 174, 175
Previsi *v.* Gatti, 1888, 4 T. L. R. 487, C. A. 47
Price *v.* Marsden, [1899] 1 Q. B. 493 ; 68 L. J. Q. B. 307 ; 80 L. T. 15 ; 47 W. R. 274 ; 15 T. L. R. 184, C. A. 128
Pugh *v.* L. B. & S. C. Rail. Co., [1896] 2 Q. B. 248 ; 65 L. J. Q. B. 521, C. A. 11
Purves *v.* Sterne, 1900, 2 Fraser, 887 ; 37 Sc. L. R. 696, C. of Sess. . 101
Pym *v.* G. N. Rail. Co., 4 B. & S. 396 121

Rae *v.* Fraser, 1899, 1 Fraser, 1017 ; 36 Sc. L. R. 782, C. of Sess. 100, 157
Raine *v.* Jobson, [1901] A. C. 404 ; 70 L. J. K. B. 771 ; 49 W. R. 705 ; 85 L. T. 141, H. L. 89, 92, 102, 104, 110
Reddy *v.* Broderick, [1901] 2 Ir. R. 328, C. A. Ir. 74
Rees *v.* Powell Duffryn Steam Coal Co., 1900, 64 J. P. 164, C. A. . 27
—— *v.* Thomas, [1899] 1 Q. B. 1015 ; 68 L. J. Q. B. 539 ; 80 L. T. 578 ; 47 W. R. 504 ; 15 T. L. R. 301, C. A. . . . 15, 27
Reid *v.* Fleming, 1901, 38 Sc. L. R. 720, C. of Sess. 100
Rendall *v.* Hill's Dry Docks Co., [1900] 2 Q. B. 245 ; 69 L. J. Q. B. 554 ; 82 L. T. 521 ; 48 W. R. 530 ; 16 T. L. R. 368, C. A. . 50
Rixson *v.* Pritchard, [1900] 1 Q. B. 800 ; 69 L. J. Q. B. 494 ; 82 L. T. 186 ; 16 T. L. R. 250, C. A. 70
Rogers *v.* Manchester Packing Co., [1898] 1 Q. B. 344 ; 67 L. J. Q. B. 310 ; 78 L. T. 17 ; 46 W. R. 350 ; 62 J. P. 166, C. A. . . 78
Roper *v.* Greenwood, 1900, 83 L. T. 471, C. A. 9, 10, 11
Rumboll *v.* Nunnery Colliery Co., 1899, 80 L. T. 42; 63 J. P. 132, C. A. 24, 27
Russell *v.* M'Cluskey, 1900, 2 Fraser, 1312 ; 37 Sc. L. R. 931, C. of Sess. 120, 130

Shearer *v.* Miller, 1899, 2 Fraser, 114 ; 37 Sc. L. R. 80, C. of Sess. 46, 47
Silvester *v.* Cude, 1899, 15 T. L. R. 434, C. A. 37
Simmons *v.* Faulds, 1901, 17 T. L. R. 352, C. A. 108
—— *v.* White, [1899] 1 Q. B. 1005 ; 68 L. J. Q. B. 507 ; 83 L. T. 344 ; 47 W. R. 513 ; 15 T. L. R. 263, C. A. 112, 114
Sims *v.* Evans, 1875, 23 W. R. 730 97

PAGE

Small *v.* M'Cormick, 1899, 36 Sc. L. R. 700, C. of Sess. . . . 128
Smith *v.* L. & Y. Rail. Co., [1899] 1 Q. B. 141 ; 68 L. J. Q. B. 51 ; 79 L. T. 633 ; 47 W. R. 146 ; 15 T. L. R. 64, C. A. . . 12, 27
Spencer *v.* Livett, [1900] 1 Q. B. 498 ; 69 L. J. Q. B. 338 ; 82 L. T. 75 ; 48 W. R. 323 ; 64 J. P. 196 ; 16 T. L. R. 179, C. A. . . 115
Stalker *v.* Wallace, 1900, 2 Fraser, 1162 ; 37 Sc. L. R. 898, C. of Sess. 54, 106
Stone *v.* Hyde, 1882, 9 Q. B. D. 76 ; 51 L. J. Q. B. 452 ; 46 L. T. 421 ; 30 W. R. 816 ; 46 J. P. 788, Div. Ct. 46, 47
Strain *v.* Sloan, 1901, 38 Sc. L. R. 475, C. of Sess. 88
Stuart *v.* Nixon, [1901] A. C. 79 ; 70 L. J. K. B. 170 ; 84 L. T. 65 ; 49 W. R. 636 ; 17 T. L. R. 156, H. L. ; reversing [1900] 2 Q. B. 95, C. A. 20, 95, 96, 104, 108, 129, 130, 131

Thompson *v.* Ashington Coal Co., 1901, 84 L. T. 412 ; 65 J. P. 356 ; 17 T. L. R. 345, C. A. 10
Timmins *v.* Leeds Forge Co., 1900, 83 L. T. 120 ; 16 T. L. R. 521, C. A. 10, 11
Todd *v.* Caledonian Rail. Co., 1899, 1 Fraser, 1047 ; 36 Sc. L. R. 784, C. of Sess. 15, 18, 27
Tunney *v.* Midland Rail. Co., 1866, L. R. 1 C. P. 291 . . . 17
Turnbull *v.* Lambton Collieries Co., 1900, 82 L. T. 589 ; 64 J. P. 404 ; 16 T. L. R. 369, C. A. 66, 75, 98

United Collieries *v.* Gavin, 1899, 2 Fraser, 60 ; 37 Sc. L. R. 47, C. of Sess. 156

Walker *v.* Lilleshall Coal Co., [1900] 1 Q. B. 488 ; 69 L. J. Q. B. 192 ; 81 L. T. 769 ; 48 W. R. 257 ; 64 J. P. 85 ; 16 T. L. R. 108, C. A. 8, 10
Weir *v.* Coltness Iron Co., 1889, 16 Rettie, 614, C. of Sess. . . 111
—— *v.* Petrie (*see* Petrie *v.* Weir).
Welland *v.* G. W. Rail. Co., 1900, 16 T. L. R. 297, C. A. . . . 146
Whitehead *v.* Reader, [1901] 2 K. B. 48 ; 70 L. J. K. B. 546 ; 84 L. T. 514 ; 49 W. R. 562 ; 17 T. L. R. 387, C. A. . . . 14, 16
Whitton *v.* Bell (*see* Bell *v.* Whitton).
Williams *v.* Poulson, 1899, 63 J. P. 757 ; 16 T. L. R. 42, C. A. . . 127
Winspear *v.* Accident Ins. Co., 1880, 6 Q. B. D. 42 11
Wood *v.* Walsh, [1899] 1 Q. B. 1009, C. A. 70, 73
Woodham *v.* Atlantic Transport Co., [1899] 1 Q. B. 15 ; 68 L. J. Q. B. 17 ; 79 L. T. 395 ; 47 W. R. 105 ; 15 T. L. R. 51, C. A. . 96, 104
Wright *v.* Bagnall, [1900] 2 Q. B. 240 ; 69 L. J. Q. B. 551 ; 82 L. T. 346 ; 48 W. R. 533 ; 64 J. P. 420 ; 16 T. L. R. 327, C. A. . 49, 50
Wrigley *v.* Bagley, [1901] 1 K. B. 780 ; 70 L. J. K. B. 538 ; 84 L. T. 415 ; 49 W. R. 472 ; 65 J. P. 372, C. A. . . . 53, 57, 83, 100

TABLE OF STATUTES.

PAGE

9 & 10 Vict. c. 93 (Fatal Accidents Act, 1846) . 22, 54, 55, 110, 111, 121
35 & 36 Vict. c. 77 (Metalliferous Mines Regulation Act, 1872) . 44, 81, 97, 98, 101, 105
36 & 37 Vict. c. 48 (Regulation of Railways Act, 1873) . . 74, 75, 76
38 & 39 Vict. c. 90 (Employers and Workmen Act, 1875) . . . 107
39 & 40 Vict. c. 70 (Sheriff Courts (Scotland) Act, 1876) . . . 156
40 & 41 Vict. c. 56 (County Officers and Courts (Ireland) Act, 1877) . 140
41 & 42 Vict. c. 16 (Factory and Workshop Act, 1878) . 76, 77, 101
s. 68 . . . . . 84, 85, 88
s. 82 . . . . . 43, 84, 85, 89
s. 93 . . . . . 77, 82, 83, 98, 99, 115
s. 99 102
Sched. IV. 78, 80, 98, 99, 115
43 & 44 Vict. c. 42 (Employers' Liability Act, 1880) . 22, 23, 32, 45, 46 47, 54, 55, 160, 172 *et seq.*
50 & 51 Vict. c. 58 (Coal Mines Regulation Act, 1887) 24, 25, 43, 81, 97, 98, 101, 105
c. 67 (Superannuation Act, 1887) 116, 117
51 & 52 Vict. c. 43 (County Courts Act, 1888) 152
52 & 53 Vict. c. 49 (Arbitration Act, 1889). 32, 142
c. 63 (Interpretation Act, 1889) 33, 49, 77
54 & 55 Vict. c. 75 (Factory and Workshop Act, 1891) . . 76, 77
ss. 8–12 . . . . . 84, 85
s. 22 85
s. 31 . . . . . 77, 83
s. 37 . . . . . 78, 83
s. 38 77
57 & 58 Vict. c. 42 (Quarries Act, 1894) 98
c. 60 (Merchant Shipping Act, 1894) 86
58 & 59 Vict. c. 37 (Factory and Workshop Act, 1895) . 76, 77, 87, 101
s. 4 . . . . . 85, 89
s. 13 43
ss. 18–21 . . . . . 85, 88
s. 23 . . . 84, 86, 94, 95, 96, 102, 103, 104

PAGE

59 & 60 Vict. c. 25 (Friendly Societies Act, 1896) . . 52, 139, 140
c. 48 (Light Railways Act, 1896) 75
60 & 61 Vict. c. 37 (Workmen's Compensation Act, 1897) . . 7 *et seq.*
63 & 64 Vict. c. 22 (Workmen's Compensation Act, 1900) . . 158 *et seq.*
1 Edw. VII. c. 22 (Factory and Workshop Act, 1901) . . 77, 83
s. 17 . . . . . 85, 89
s. 104 . . . . . 85, 89, 95, 102, 104
s. 105 . . . . . 86, 96
s. 119 . . . . . 85, 89
s. 136 . . . . . 43, 85
s. 142 . . . . . 64, 102
s. 149 . . . . . 77, 81, 83, 98, 99, 115
s. 150 83
s. 156 . . . . . 78, 83
Sched. VI. 78, 80, 98, 99, 115

THE WORKMEN'S COMPENSATION ACTS, 1897 AND 1900.

INTRODUCTION.

The Workmen's Compensation Act, 1897, introduced an entirely new principle into the law with respect to compensation for accidents to workmen. Prior to the commencement of that Act, no employer was liable, apart from any special contract, to pay compensation for any injury sustained by workmen in his employ, unless the injury was attributable to some wrongful act or omission on his part, or on the part of some person for whose act or omission he was responsible. The Workmen's Compensation Acts in effect make employers insurers of workmen employed by them in certain classes of work, against accidental injuries arising out of and in the course of the employment. The liability to pay compensation under the Acts does not depend upon the injury being attributable to any negligence or other breach of duty on the part of the employer or any other person; and compensation may be claimed although the injury is directly due to the workman's own negligence or misconduct, unless it is attributable to his serious and wilful misconduct, in which case alone is the claim for compensation to be disallowed (sect. 1 (2) (c)).

It appears to have been the intention of the Legislature to confine the new principle of compensation, in

the first instance, to workmen whose employment is of a more than usually hazardous or dangerous character. The Act of 1897 applies only to workmen employed on, in, or about a railway, factory, mine, quarry, or engineering work, or on, in, or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water, or other mechanical power is being used for the purpose of the construction, repair, or demolition thereof (sect. 7 (1)); the term "factory" including not only factories as defined by the Factory Acts, but also any dock, wharf, quay, warehouse, machinery, or plant, to which any provision of those Acts is applied, and every laundry worked by steam, water, or other mechanical power (sect. 7 (2)). The benefits of the Act of 1897 are extended by the Act of 1900 to workmen employed in agriculture by any employer who habitually employs one or more workmen in such employment.

The only persons liable to pay compensation under the Act of 1897 are "the undertakers" as therein defined; that is to say, in the case of a railway, the railway company; in the case of a factory, quarry, or laundry, the occupier thereof; in the case of a mine, the owner thereof within the meaning of the Mining Regulation Acts; in the case of an engineering work, the person undertaking the work of construction, alteration, or repair; and in the case of a building, the persons undertaking the construction, repair, or demolition (sect. 7 (1) and (2)). In certain cases, where work is executed under a contract with the undertakers, the undertakers are liable to pay compensation to the workmen of the contractor as if such workmen were employed immediately by them (see sect. 4).

Subject to the provisions of section 4, it is necessary, in order that a claim for compensation under the Act should be maintainable, not only that the workman should be employed on, in, or about one of the specified works, but also that his employers should be "the undertakers" as defined by the Act.

All rights of action the workman or his dependants may have independently of the Act, whether against the employer or any other person, are preserved. But the employer is not liable to pay compensation both under the Act and independently of it. Nor is he liable to pay compensation if damages in respect of the injury are recovered from any other person. Where an action is brought against the employer to recover damages independently of the Act, and such action is dismissed, the plaintiff is entitled to have any compensation to which he is entitled under the Workmen's Compensation Act assessed by the Court in which the action is tried, provided an application for that purpose is made at the time of the dismissal of the action. Subject to this, an action against the employer for damages is a bar to subsequent proceedings for compensation, and proceedings for compensation under the Act are a bar to a subsequent action against the employer for damages. An employer who pays compensation under the Act is entitled to be indemnified by any other person who would have been liable to pay damages in respect of the injury (sects. 1 (2) (b), (4), 6).

Proceedings are not maintainable for compensation under the Act unless notice of the accident has been given as soon as practicable, and before the workman has voluntarily left his employment, nor unless the claim for compensation was made within six months from the date of the accident. Provided that the want

of due notice is not a bar to the proceedings if the employer has not been prejudiced in his defence thereby, or if it was occasioned by mistake or other reasonable cause (sect. 2).

Contracting out is only permitted where the contract substitutes a scheme of compensation, benefit, or insurance, which has been certified by the Registrar of Friendly Societies to be on the whole not less favourable to the general body of workmen and their dependants than the provisions of the Act (see sect. 3).

The scale of compensation is fixed by the First Schedule. In the case of death resulting from the injury, the compensation is to be a lump sum paid to or for the benefit of the dependants (if any). Such sum is in no case to exceed £300. Where there are no dependants a sum not exceeding £10 may be awarded in respect of funeral and medical expenses. Where total or partial incapacity results from the injury, the compensation is to be a weekly payment during incapacity, not exceeding 50 per cent. of the average weekly earnings of the workman in the employment of the same employer, and not exceeding £1. Compensation is not to be allowed in respect of the first two weeks; and unless the workman is disabled for at least two weeks from earning full wages at the work at which he was employed, no compensation is payable at all (sect. 1 (2) (a); Sched. I. (1) and (2)). Any weekly payment may be reviewed from time to time at the request of either the employer or the workman; and where any weekly payment has been continued for not less than six months, it may, on the application of the employer, be redeemed by the payment of a lump sum (Sched. I. (12), (13)). No limit is placed on the sum

which may be awarded in redemption of a weekly payment.

A workman who has given notice of an accident may be required by the employer to submit himself for medical examination, and in default of his doing so, his right to compensation, and any proceedings in relation thereto, will be suspended until the examination takes place (Sched. I. (3)). Submission to medical examination from time to time is also required in the case of a workman in receipt of weekly payments (Sched. I. (11)).

All questions arising under the Act as to the liability to pay compensation, or the amount and duration thereof, or as to who are dependants, or the amount payable to each dependant, or as to the amount to be paid in redemption of a weekly payment, if not settled by agreement, must be determined by arbitration. No action will lie for the determination of any such question, or for the recovery of compensation under the Act. The arbitrator may be (1) a committee representative of the employer and his workmen; (2) an arbitrator agreed upon by the parties; (3) the County Court Judge; or (4) an arbitrator appointed by the County Court Judge (Sched. II. (1), (2)). Any arbitrator other than the County Court Judge may submit any question of law for the opinion of the County Court Judge; and there is an appeal on questions of law from any decision of the County Court Judge, either on any such submission, or in any case where he himself acts as arbitrator, to the Court of Appeal, and from the Court of Appeal to the House of Lords.

Most of the arbitrations under the Act come before the County Court Judge. The procedure on arbitrations in the County Court is regulated by the Workmen's

Compensation Rules, 1898 to 1900, which are set out in Appendix A, together with the County Court Rules incorporated therein. No court fee is payable by any party in respect of an arbitration in the County Court prior to the award.

The Rules of the Supreme Court regulating appeals to the Court of Appeal are set out in Appendix B.

THE WORKMEN'S COMPENSATION ACT, 1897.

(60 & 61 Vict. c. 37.)

An Act to amend the Law with respect to Compensation to Workmen for accidental Injuries suffered in the course of their Employment.

[6th August, 1897.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1.—*Liability of certain employers to workmen for injuries.*—(1) If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as herein-after mentioned, be liable to pay compensation in accordance with the First Schedule to this Act.

Employments to which the Act applies.—See sect. 7 (1) and (2), and notes thereto (pp. 63 to 116, *post*). The Act is now extended by the Workmen's Compensation Act, 1900, to employment in Agriculture (see *post*, p. 158).

It should be noted that the Act has no application unless the employment is by "undertakers" as defined by section 7 (2). Where, however, the undertakers as so defined contract with any other person for the execution of any work within the scope of the Act, and such work is a part of or process in the trade or business carried on by such undertakers, and is not

merely ancillary or incidental thereto, the undertakers are liable to pay compensation to the workmen employed by the contractor in the execution of the work, as though such workmen were their own servants (see sect. 4 and note, *post*, p. 52). Subject to this, it is necessary, in order to claim the benefit of the Act, not only that the workman should be employed in one of the specified kinds of work, but also that his employer should be the "undertaker" of the work (see *Cass* v. *Butler*, [1900] 1 Q. B. 777, C. A.; *Malcolm* v. *M'Millan*, 1900, 2 Fraser, 525, C. of Sess.; *Francis* v. *Turner*, [1900] 1 Q. B. 478).

Injury by accident.—To be within the scope of the Act, the injury in respect of which the claim for compensation is made must be caused by "accident." It is therefore necessary to inquire what is an accident within the meaning of the Act. This question has arisen and been answered, more or less fully, in several cases in the Court of Appeal.

In *Hensey* v. *White*, [1900] 1 Q. B. 481, compensation was claimed in respect of the death of a cabinet maker. One of the duties of the deceased was to start a gas-engine by turning a wheel, and on the resumption of work after the Christmas holidays, the wheel having become stiff owing to disuse, the strain of endeavouring to turn it caused a fatal rupture of the small blood-vessels of the stomach and intestines. Evidence was given that the deceased suffered from chronic congestion and inflammation of the coats of the stomach, and the County Court Judge found that the fatal loss of blood was the result of this chronic disease, and not the result of accident, though the death was possibly accelerated by the strain in endeavouring to turn the wheel. The Court of Appeal approved and upheld the decision, Collins, L.J., in his judgment, quoting with approval the opinion of Halsbury, L.C., in *Hamilton* v. *Pandorf*, 12 A. C. 518, that "the idea of something fortuitous and unexpected is involved in both words, 'peril' or 'accident.'"

In *Walker* v. *Lilleshall Coal Co.*, [1900] 1 Q. B. 488, the applicant was an engine-fitter, who, having previously blistered

one of his fingers while doing his ordinary work, was engaged, on the day of the injury in respect of which compensation was claimed, in screwing together certain joints, red lead being used in the process. He had shown his blistered finger to the foreman, remarking that it was hardly fit for the job, and the foreman had replied that the job must be done. The applicant accordingly went on with the work, and the red lead coming in contact with the blistered finger, caused serious injury. The County Court Judge held that, as the injury was the result of working in the ordinary way with the usual materials and appliances, there was no accident within the meaning of the Act, and refused to award compensation. The Court of Appeal upheld the decision, A. L. Smith, L.J. (at p. 490), taking the opportunity of adopting what Collins, L.J., said in *Hensey* v. *White* (*supra*) as to a fortuitous element being a necessary ingredient of an accident.

In *Roper* v. *Greenwood*, 83 L. T. 471, the same principle was applied. The applicant was a woman, employed as a box-maker, and being ordered to work on boxes which were larger and heavier than those she had been accustomed to work on, complained that they were too heavy, but, having failed to obtain any assistance, went on with the work and sustained internal injury from the unusual exertion and strain. The Court of Appeal agreed with the decision of the County Court Judge that it was not an injury by accident, nothing having happened which was fortuitous or unforeseen as the applicant went from one box to another in the performance of her work.

In *Lloyd* v. *Sugg*, [1900] 1 Q. B. 486, the applicant was a smith, employed in manipulating metal in a forge, and the circumstances under which the injury happened were as follows :— The applicant was holding a flatter on an anvil, and a boy was beating the flatter with a hammer. The boy, missing his aim, hit the round rod of the flatter instead of the flat head, and jarred the applicant's hand, which became swollen to such an extent as to incapacitate him from work. Medical evidence was given to the effect that the applicant had a gouty diathesis, and that the result of the jar was to excite the gout in the system, and so cause the swollen condition of the hand. The

County Court Judge awarded compensation, and the employers appealed on the ground that there was no evidence that the injury was caused by accident. The Court of Appeal held that it was sufficient if the injury was partially caused by accident, and that the fact of its being increased by disease was immaterial, and dismissed the appeal.

In *Timmins* v. *Leeds Forge Co.*, 1900, 83 L. T. 120, a workman, whose duty was to lift planks of timber from a stack and move them to another part of the yard, ruptured himself in trying to remove and lift one of the planks. Evidence was given that, owing to a frost, the planks had become frozen together, and were therefore unusually hard to lift. The County Court Judge found that the injury was due to accident; and the Court of Appeal refused to disturb the award, on the ground that it was impossible to say that there was no evidence of a fortuitous and unexpected event by reason of which the accident happened. The County Court Judge must be taken to have found that the workman unexpectedly came across a plank which was harder to lift than any other that day (see the judgment of Vaughan Williams, L.J.)

In *Thompson* v. *Ashington Coal Co.*, 1901, 84 L. T. 412, compensation was claimed and awarded in respect of the death of a miner. The cause of death was blood-poisoning, which the County Court Judge inferred from the evidence was set up by a piece of coal working itself into the miner's knee while employed in hewing coal, in which work he was obliged to kneel. The Court of Appeal approved the finding of the County Court Judge that the injury was caused by accident, and confirmed the award.

The foregoing cases appear to establish the following principles:—(1) Something fortuitous and unexpected is a necessary ingredient of an accident within the meaning of the Act. (2) Where a workman, while doing his ordinary work with the usual materials and appliances, suffers injury in consequence of his physical unfitness for the work, such injury is not an injury by accident (*Roper* v. *Greenwood*; *Hensey* v. *White*; *Walker* v. *Lilleshall Coal Co.*). (3) Where the injury is caused by an event of a fortuitous and unexpected nature, it is none the less

an injury by accident because it is aggravated by disease or by the physical unsoundness of the workman (*Lloyd* v. *Sugg*). It is not easy to distinguish *Timmins* v. *Leeds Forge Co.* from *Roper* v. *Greenwood* and *Hensey* v. *White*, but the question whether an injury is caused by accident or not is almost entirely one of fact for the arbitrator; and it may be noted that in every one of the cases cited, the Court of Appeal refused to disturb the decision of the County Court Judge.

The following cases, though they did not arise under the Workmen's Compensation Act, may also be referred to as to the meaning of the word "accident." In *Pugh* v. *L. B. & S. C. Rail. Co.*, [1896] 2 Q. B. 248, the plaintiff, a signalman in the employ of the defendant company, claimed under a contract of insurance which provided for the payment of a weekly allowance if he should be "incapacitated from employment by reason of accident sustained in discharge of his duty in the company's service"; the insurance "to be absolute for all accidents, however caused, occurring to the insured in the fair and ordinary discharge of his duty." The plaintiff had been incapacitated by shock to the nervous system through excitement and alarm caused by the anticipation of an accident, which appeared imminent, but which did not take place, and it was held that he was "incapacitated by accident" within the meaning of the policy. In *Winspear* v. *Accident Insurance Co.*, 1880, 6 Q. B. D. 42, the claim was made under a policy of insurance against "any personal injury caused by accidental, external and visible means," with a proviso that the insurance should not extend to "any injury caused by or arising from natural disease or weakness, or exhaustion consequent upon disease." The assured, while crossing and fording a stream, had an epileptic fit, in which he fell into the stream and was drowned, sustaining no personal injury other than drowning. It was held that the death was caused by the accident of drowning, and was within the risk covered by the policy, though it would have been otherwise if the epilepsy had been the direct cause of death. So, where a policy insured against "injuries accidentally occurring from material and external cause operating upon the person of the assured, where such accidental injury is the direct and

sole cause of death, but not in case of death arising from fits," and the assured had a fit at a railway station, and fell off the platform across the railway, where he was run over and killed by a passing train, it was held that the death was caused by accident, and that the defendants were liable under the policy (*Lawrence* v. *Accident Ins. Co.*, 1881, 7 Q. B. D. 216).

The term "injury by accident" as used in the Act includes injuries due to the negligence or misconduct of the workman (see *post*, pp. 15, 24—27).

Arising out of and in the course of the employment.—To give rise to a claim for compensation under the Act, the accident causing the injury must arise "out of" the employment, and also "in the course of" the employment. It does not follow that because an accident happens in the course of the employment it also arises out of the employment, and both conditions must be satisfied.

The cases decided under the Act appear to justify the following propositions as to the meaning of the words "arising out of and in the course of the employment":—(1) Where the accident happens in consequence of the workman doing something for his own pleasure or his own purposes, and not on his employer's behalf, it does not arise out of the employment within the meaning of the Act. (2) Where the accident happens by reason of the workman doing something quite outside the scope of his duties, though on his employer's behalf, that is not an accident arising out of and in the course of the employment, except where the extra duty is undertaken on an emergency and in the employer's interest. (3) An accident may arise out of and in the course of the employment within the meaning of the Act, though it is due to the workman adopting a wrong and dangerous method of doing work which could be done with safety (*Durham* v. *Brown*, 1898, 1 Fraser, 279, C. of Sess.), or though it is due to his negligence or misconduct, or to his disobedience to the rules or instructions of his employer. The following cases illustrate these principles:—

(1) *When not acting on employer's behalf.—Smith* v. *Lancashire and Yorkshire Rail. Co.*, [1899] 1 Q. B. 141. In this case

compensation was claimed in respect of the death of a ticket-collector in the employ of the respondent company. The deceased, after collecting the tickets from a train, stood on the platform, and then, after the train had started, got on to the footboard in order to make a remark to a lady passenger. In getting off, his foot caught, and he fell down between the platform and the train, and was crushed to death. The County Court Judge found as a fact that the deceased was not engaged in any act of service at the time, but got on to the footboard for his own pleasure; but held that the accident arose in the course of the employment, because it happened during the employment and the deceased was not neglecting any duty to the company, and out of the employment because it happened from the train about which his duties were concerned. The appeal of the company was allowed, the Court of Appeal being unanimously of opinion that the accident did not arise out of the employment, and Lord Justice Collins being inclined to think that it did not arise in the course of the employment.

In *Callaghan* v. *Maxwell*, 1900, 2 Fraser, 420, a girl, employed as a farm servant, was engaged on the platform of a threshing machine, and in attempting to step across the opening through which the mill was fed with sheaves, in order to speak to another girl, she slipped and was caught in the machinery. The girls had been specially directed to remain in their places, and warned of the danger of moving about. It was held by the Court of Session that the accident did not arise out of and in the course of the employment.

In *Harrison* v. *Whitaker*, 1899, 16 T. L. R. 108, the facts were as follows:—A boy, engaged in greasing truck-wheels, having finished all that were ready, and while waiting for others to arrive, sat down on the handle of a lever near a fire not far away, to warm himself. He saw an engine coming, and thinking the points were against it, commenced to pull the lever over, when the engine came up and took the lever (which was an automatic one) over with a jerk, throwing the boy against the engine, and causing the injury in respect of which compensation was claimed. It did not appear that he had been told not to touch the lever, though it was no part of his duty

to do so. The County Court Judge found that the boy was not neglecting any duty when the accident happened, and that he was under no obligation to wait for the trucks in any particular place. On these facts, the Court of Appeal held that the County Court Judge was justified in his finding that the accident arose out of and in the course of the employment.

(2) *When acting outside scope of duties.*—*Lowe* v. *Pearson*, [1899] 1 Q. B. 261, is a leading case in illustration of the principle that the employer is not liable to pay compensation when the injury happens in consequence of the workman acting outside the scope of his duties. The applicant was a boy employed in a pottery, and it was his duty to make up balls of clay, put them into moulds, and hand them to a woman working at a machine. It was no part of the applicant's duty to interfere with the machinery, and he had been expressly told not to do so; and the injury was caused by his attempting to clean the machinery in the absence of the woman in charge of it. The County Court Judge found that it was against the rules for the applicant to clean the machinery, and that he attempted to do so, knowing it was not part of his duty; but that, though he knew it was against orders, and attempted the cleaning in a careless and reckless manner, yet he was attempting to further his master's work; and held that the accident arose out of and in the course of the employment. The decision was unanimously reversed by the Court of Appeal; it being pointed out that the employment was not such as to bring the applicant into contact with the machinery at all, and that it was not the case of a servant, while in his master's employ, doing upon an emergency something outside the scope of what he was employed to do, in the interests of his master.

Lowe v. *Pearson* was distinguished in *Whitehead* v. *Reader*, [1901] 2 K. B. 48, where a carpenter, part of whose duty was to sharpen tools at a grindstone rotated by machinery, was injured in endeavouring to replace the band rotating the stone, which had come off. The applicant had been forbidden to touch the machinery, but the Court of Appeal did not consider the attempt to replace the band so clearly beyond the scope of the applicant's employment as to justify it in reversing the

decision of the County Court Judge, that the accident arose out of and in the course of the employment. An act done in disobedience to the master's orders is not necessarily an act outside the scope of the employment. In *Lowe* v. *Pearson* not only was the attempt to clean the machinery contrary to instructions, but the applicant had nothing to do with the machinery at all.

In cases of emergency.—In *Rees* v. *Thomas*, [1899] 1 Q. B. 1015, compensation was claimed in respect of the death of a fireman employed in a mine. It was part of the duty of the deceased to make reports at an office about half a mile from the pit's mouth, and he was riding on a truck running in the direction of the office on a tramway belonging to the mine, in order to make a report, when the horse drawing the trucks bolted. The deceased jumped down, and, in trying to stop the horse, fell and was killed. In riding on the truck, the deceased was committing a breach of the rules of the mine, but the Court of Appeal, affirming the decision of the County Court Judge, held that as the deceased, in trying to stop the horse, was acting in the interests of his employer in an emergency which suddenly arose, and as he was engaged at the time in taking a report in the ordinary course of his duty, the accident arose out of and in the course of the employment. So, where a labourer in a steam-joinery shop, whose duties were not connected with the machinery, met with a fatal accident while assisting, at the request of a fellow-workman, and in the absence of the foreman, to replace some loose belting on machinery in motion, it was held by the Court of Session that the accident arose out of and in the course of the employment (*Menzies* v. *M'Quibban*, 1900, 2 Fraser, 732, C. of Sess. ; see also *Devine* v. *Caledonian Rail. Co.*, 1899, 1 Fraser, 1105, C. of Sess.).

Negligence and Misconduct.—The fact that the accident is due to the negligence or disobedience to rules or other misconduct of the workman, does not necessarily prevent it from arising out of and in the course of the employment within the meaning of the Act, and does not disentitle him to compensation (*McNicholas* v. *Dawson*, cited *post*, p. 19; *Todd* v. *Caledonian Rail. Co.*, 1899, 1 Fraser, 1047, C. of Sess. ; *Durham* v. *Brown*,

1898, 1 Fraser, 279, C. of Sess.; *M'Nicol* v. *Spiers*, 1899, 1 Fraser, 604, C. of Sess.; *Whitehead* v. *Reader*, cited *supra*), unless the injury is attributable to his serious and wilful misconduct, as to which see sub-sect. 2 (c) and notes thereto, p. 24, *post*. In *London and Glasgow Engineering Co.* v. *Falconer*, 1901, 38 Sc. L. R. 381, the Court of Session held that injury caused to a workman by two fellow-workmen who were engaging in "horse-play," did not arise out of the employment, although the applicant was at work at the time, and was not in any way to blame.

Going to and returning from work.—The question whether an accident, happening while the workman suffering the injury is on his way to or from his work, arises out of and in the course of the employment, depends upon the terms and conditions of the contract of employment. "It must be borne in mind that there is a difference between the beginning of a man's employment and the beginning of his work; for instance, in a coal pit the employment begins as soon as the miner leaves the bank, although he may have some distance to go to his actual work after he has got down the pit" (per A. L. Smith, L.J., in *Holmes* v. *G. N. Rail. Co.*, [1900] 2 Q. B. 409, 411); and, although a workman is leaving a mine for purposes of his own, and having no lawful excuse for leaving, an accident happening while he is being drawn up is an accident arising in the course of his employment (see *Brydon* v. *Stewart*, 1855, 2 Macq. 30, H. L.).

In the case of *Holmes* v. *G. N. Rail. Co.*, cited above, an engine-cleaner, whose work was usually at King's Cross station, was directed to work at a new engine-shed belonging to the respondent company near Hornsey station on the company's line of railway. He accordingly went from King's Cross, which was near where he lived, by one of the company's trains to Hornsey, no fare being demanded, and arrived there about a quarter of an hour before the time fixed for the commencement of work. On the way from Hornsey station to the shed where he was to work, while crossing the line in order to save time, he was knocked down by a train and fatally injured. The County Court Judge decided that the employment commenced at King's Cross, and awarded compensation, and an appeal by the company was dismissed, on the

ground that there was an implied contract by the appellants to take the deceased from King's Cross to Hornsey, there to find him work, and to take him back again when the day's work was over (see also *Tunney* v. *Mid. Rail. Co.*, 1866, L. R. 1 C. P. 291).

But the mere fact that the employer runs a conveyance for the convenience of his workmen, which they may use free of charge if they think fit, but which the employer is under no contract or obligation to supply, does not of itself extend the period of employment so as to include the time occupied in going to and fro. Thus, in *Davies* v. *Rhymney Iron Co.*, 1900, 16 T. L. R. 329, the owners of a colliery, who also owned a line of railway running from the mine to the place where the colliers lived, ran trains for the purpose of taking, without payment, such of the colliers as chose to use them, to and from their homes. One of the colliers was injured while using one of these trains near his home, and claimed compensation in respect of the injury. The County Court Judge found that it was not a condition of the applicant's employment that he should be carried to and fro, that he was under no obligation to use the train, and that the train was only provided as a matter of convenience, and not under any contract, duty or obligation on the part of the employers. On these findings the Court of Appeal confirmed the decision of the County Court Judge that the injury did not arise out of and in the course of the employment.

Holness v. *Mackay*, [1899] 2 Q. B. 319, gave rise to a conflict of opinion in the Court of Appeal. The respondents were a firm of contractors who had entered into a contract with the Great Western Railway Company for the widening of the line of railway. At the time of the accident they were ballasting a siding which could only be reached by walking some considerable distance through the premises of the railway company. The deceased workman, in respect of whose death the claim for compensation was made, was run over and killed on the main line about 150 yards from the place where he was working, a few minutes before the time fixed for work to commence. There were two entrance gates to the premises where the work was being carried on, and the men, including

the deceased, had been told to use the "Waterloo" gate, which would not necessitate their crossing the main line. The County Court Judge found that the deceased had entered by the Waterloo gate as directed, and had wandered on to the main line owing to the morning being foggy, and held that the employment commenced as soon as he got on to the premises of the railway company for the purpose of going to work. The Court of Appeal (Rigby, L.J., dissenting) set aside the award, on the ground that the accident did not arise in the course of the employment. Lords Justices A. L. Smith and Vaughan Williams based their judgments on the facts—(1) that the employers had no control over the line, but merely a licence from the railway company for their workmen to use it as a means of access to the place where the work was being carried on; (2) that the hour for the commencement of work had not arrived, and it was no part of the contract that the time occupied in going to work should be counted. They therefore held that there was no evidence to support the finding of the County Court Judge that the employment had commenced at the time when the accident happened. In Lord Justice Rigby's opinion the employment substantially commenced when the deceased began to act upon the implied right or licence to go on the premises of the railway company.

In *Gibson* v. *Wilson*, 1901, 38 Sc. L. R. 450, the applicant was on his way to his work at a church which was undergoing repairs, and finding that he was unable to unlock the gate of the churchyard, was climbing over some railings in order to get to the work, when he sustained the injury in respect of which compensation was claimed. The Court of Session confirmed the opinion of the Sheriff that the injury did not arise in the course of the employment, but before the employment had commenced.

In *Todd* v. *Caledonian Rail. Co.*, 1899, 1 Fraser, 1047, an engine-driver, in the employ of the respondent company, was run over by a train while walking along the line on his way to a neighbouring station where it was his duty to report himself as off duty. His active duty was over at the time of the accident, but he was entitled to wages or overtime until he

reached home. There was no rule forbidding servants of the company to walk on the line. The Court of Session held that the accident arose out of and in the course of the employment. Here the employment clearly continued until the deceased had reported himself off duty (see also *Cowler* v. *Moresby Coal Co.*, 1885, 1 T. L. R. 575).

Burden of proof.—In *McNicholas* v. *Dawson*, [1899] 1 Q. B. 773, it was the duty of the deceased, in respect of whose death compensation was claimed, to fire and start an engine in a shed, and then to pass from the shed to a mortar-pan standing outside, with which the engine was connected. There were two ways of leaving the shed; a front doorway, which it was the duty of the deceased to use; and a small doorway at the rear, to get at which it would be necessary to pass under the revolving shaft of the engine, which the deceased had been forbidden to do. A minute or two after the deceased had started the engine on the morning of the accident he was found involved in the machinery and going round with the revolving shaft, but no one had seen how the accident happened. The County Court Judge held that the onus of proving that the accident arose out of and in the course of the employment was on the applicant, and that as the evidence left it uncertain whether it arose out of the employment or not, he refused to award compensation. He also found that serious and wilful misconduct had not been proved. On appeal, the decision was reversed, the Court of Appeal holding that there was sufficient evidence that the accident arose out of and in the course of the employment, for even assuming "that the deceased was going out of the shed the wrong way, and did so carelessly, rashly and negligently, that would not absolve the master under the Act unless the injury was attributable to serious and wilful misconduct on his part" (per A. L. Smith, L.J., at p. 777).

"In accordance with the First Schedule."—The First Schedule provides for the assessment of the compensation on the basis of the average weekly earnings of the workman during the period of his employment under the same employer

(*post*, pp. 118 *et seq.*); and it was held by the Court of Appeal that the words in this section "shall . . . be liable to pay compensation in accordance with the First Schedule" had the effect of restricting the right to compensation to cases where the workman had been in the employment of the same employer for two weeks at least (*Lysons* v. *Knowles*, [1900] 1 Q. B. 780 ; *Stuart* v. *Nixon*, [1900] 2 Q. B. 95). On appeal to the House of Lords it was decided that that construction of the Act was wrong, and both cases were reversed on the ground that the schedule only provides the mode for ascertaining the amount of compensation, and not for ascertaining whether there is a right to it. The conditions to be fulfilled in order to establish a right to compensation are in the Act itself (*Lysons* v. *Knowles ; Stuart* v. *Nixon*, [1901] A. C. 79). It is now, therefore, finally settled that casual and daily workmen are within the scope of the Act, even though they have only just entered the service of the employer at the time when the accident happens, and have never worked for him before.

(2) Provided that :—

(a) The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed ;

Disability for two weeks.—A workman may be disabled from earning full wages within the meaning of this sub-section, although he may have in fact continued to receive the same rate of wages after the accident as he did before. Disability under the sub-section "must depend upon the question whether the workman is capable of performing the work at which he was employed at the time of the accident as efficiently as he did before" (per Rigby, L.J., in *Chandler* v. *Smith*, [1899] 2 Q. B. 506, 513). In this case, the foreman of the weaving department in a carpet factory sustained an injury which necessitated the amputation of his thumb. The supervision of the hands was the chief part of his duty as foreman, but he

sometimes set up and adjusted the machines. After the accident he continued in his employment, and full wages were paid to him, but he was incapacitated from setting up and adjusting the machines, and it was admitted that his wage-earning power as a foreman was materially decreased. The County Court Judge found that the full wages were paid, not as a matter of grace, but under the contract of service, and held that the applicant had not been disabled for two weeks as required by the Act, and therefore was not entitled to compensation. An appeal by the applicant was allowed, it being held by the Court of Appeal that there was no evidence to justify the finding that the full wages had not been paid as a matter of grace, or that the applicant was entitled under the contract of service to recover the same wages. It was also decided that the proper course to take in such a case was to make a declaration of the liability of the employer to pay compensation, adjourning the question of the amount and duration thereof, so that, should the workman at any time be unable to earn the same wages, an application for a review might be made under clause 12 of the First Schedule (*post*, p. 137).

This decision has been approved and followed in Scotland by the Court of Session. In *Freeland* v. *Macfarlane*, 1900, 2 Fraser, 832, a boy who was employed in a bakery, and whose duty chiefly consisted in cleaning and preparing fruit for baking, sustained injuries necessitating the amputation of portions of his thumb and three fingers. He returned to the service of the same employer after the accident, and was paid the same wages as before, though engaged in a different kind of work. It was held that the claim for compensation ought not to be dismissed, and that the proper course to pursue was that laid down by the Court of Appeal in *Chandler* v. *Smith*, *supra* (see also *G. N. of Scotland Rail. Co.* v. *Fraser*, 1901, 38 Sc. L. R. 653).

(b) When the injury was caused by the personal negligence or wilful act of the employer, or of some person for whose act or default the employer is responsible, nothing in this Act shall

affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act, or take the same proceedings as were open to him before the commencement of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid.

Choice of remedies.—This sub-section reserves to the workman or his representatives all rights of action he or they may have independently of the Act, either at Common Law, or under the Employers' Liability Act, 1880, or the Fatal Accidents Act, 1846. But the workman must elect whether he will proceed under this Act or independently of it. He cannot, after having proceeded under this Act, though unsuccessfully, take any other proceedings in respect of the same injury. Nor, except as provided by sub-sect. 4 (*post*, p. 41), can he proceed under this Act after having been defeated in an action brought independently of the Act. "As I read sect. 1 (2) (b) it gives to the workman, in cases where he would previously have had a right of action, an option, which he may exercise as he likes; of bringing an action at common law, or of resorting to the procedure for the assessment of compensation given by the Act itself. The respondent has availed himself of the right given him by that sub-section ; he has exercised his option of bringing a common law action, which has failed. Having been defeated in this action, there would, but for the provisions of sect. 1, sub-sect. 4, have been an end of any claim by the respondent against the appellants in respect of the injury. That sub-section, however, is in favour of the workman, and gives him a very great advantage where he has exercised his option and finds too late that he has exercised it in the wrong way ; it gives him a *locus*

pœnitentiæ, and enables the County Court Judge before whom the action is tried, if applied to by the plaintiff at the time, to assess compensation under the Act" (per A. L. Smith, L.J., in *Edwards* v. *Godfrey*, [1899] 2 Q. B. 333). In this case the workman, having failed in an action under the Employers' Liability Act, filed a request for arbitration under this Act three weeks after the date of the trial. The Court of Appeal unanimously decided that the matter was *res judicata*, and the judgment of Lord Justice A. L. Smith (cited *supra*), with which the other members of the Court entirely agreed, has equal application where proceedings are taken for compensation under the Act, and subsequently an action for damages. A mere notice of the accident, given in pursuance of sect. 2, would, however, probably not be deemed a proceeding under the Act for this purpose (see *Perry* v. *Clements*, 1901, 17 T. L. R. 525).

In *Little* v. *MacLellan*, 1900, 2 Fraser, 387, a workman who had been injured in the course of his employment accepted weekly payments from his employer, and gave receipts, some of which stated that the sums received were "in full satisfaction of the amount due as compensation under the Workmen's Compensation Act, based on my average weekly earnings, in accordance with the said Act," and others merely "on account of compensation." Having received these weekly payments for about six months, he brought an action under the Employers' Liability Act, and pleaded that he had accepted the payments as payments of compensation due by law, and did not understand that he was electing to take under the Workmen's Compensation Act. The Court of Session held—(1) that the receipts imported an election to take under the Workmen's Compensation Act; (2) that no relevant ground had been alleged for setting aside the receipts; and (3) that he was barred from this action. The action being dismissed, the Court, in view of sub-sect. 4, remitted the case to the Sheriff to determine the amount of compensation due under the Workmen's Compensation Act (see also *Campbell* v. *Caledonian Rail. Co.*, 1899, 1 Fraser, 887; *Hunter* v. *Darngavil Coal Co.*, 1900, 38 Sc. L. R. 6).

(c) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall be disallowed.

Serious and wilful misconduct.—Misconduct, in order to deprive a workman of his right to compensation under the Act, must not only be wilful, but also be of a serious nature, and it must be shown that the injury was caused by the misconduct. The onus of proving that the injury is attributable to the serious and wilful misconduct of the workman is on the employer (*McNicholas* v. *Dawson*, [1899] 1 Q. B. 773).

"Wilful misconduct" involves a knowledge on the part of the workman that he is doing wrong, and that mischief may possibly result from such wrong-doing (see *Lewis* v. *G. W. Rail. Co.*, 1877, 3 Q. B. D. 195, where the question was whether damage to goods had been caused by the wilful misconduct of the company's servants).

The contention that the workman has been guilty of serious and wilful misconduct has been upheld in very few of the cases decided under the Act, even where there has been disobedience to express instructions, or a breach of known rules or regulations.

In *Rumboll* v. *Nunnery Colliery Co.*, 1899, 80 L. T. 42, compensation was claimed by a miner in respect of injuries which the respondents contended were caused by the serious and wilful misconduct of the applicant in committing a breach of the special rules made under the Coal Mines Regulation Act, 1887. At the time when the accident occurred, the applicant was employed, with other miners, in cutting into the mine, and a part of the ceiling of the cutting appearing to be in a dangerous condition, the men, including the applicant, were directed by the ganger to prop it up in a particular way, which they did. Subsequently, finding that they could not work the tram line with the props in the position in which they were placed, and so that they might go on with the work in that part of the cutting, the men moved the props into a different position. In so moving the props, the applicant and the other men were

committing breaches of the special rules of the mine, and the injury for which compensation was claimed was caused by a fall of that portion of the ceiling from which the props were removed. The County Court Judge found that the applicant had not been guilty of serious and wilful misconduct, and awarded compensation. On appeal, the Court of Appeal held that a breach of the rules made under the Coal Mines Regulation Act, 1887, even by a miner who was aware of the rules, did not, as a matter of law, necessarily amount to serious and wilful misconduct; but that the nature of the breach, and the whole of the circumstances under which it occurred, must be considered in each case. The appeal was accordingly dismissed; and in delivering judgment, A. L. Smith, L.J., expressed the opinion that "an appeal against the finding that there has not been serious and wilful misconduct on the part of a workman can hardly ever be successful" (at p. 43).

Such an appeal has been successful in one instance in a Scotch case, which also was a case of the breach of a special rule made under the Coal Mines Regulation Act. The rule was as follows:—"While charging shot-holes or handling any explosive not contained in a securely closed case or canister, a workman should not smoke or permit a naked light to remain on his cap, or in such a position that it could ignite the explosive." The workman, in respect of whose death compensation was claimed, was in breach of the rule wearing a naked lighted lamp on his cap while carrying cartridges not enclosed in a case or canister, when a spark from the lamp ignited the cartridge, resulting in the explosion which caused his death. The Sheriff found that the deceased must be assumed to have been aware of the special rules, but that he had not been guilty of serious and wilful misconduct. On appeal, the Court of Session held—(1) that on the facts found by the Sheriff, the question whether there had been serious and wilful misconduct was a question of law on the construction of the Act; (2) that the death was attributable to the serious and wilful misconduct of the deceased; and (3) that the dependants were not entitled to compensation (*Dailly* v. *Watson*, 1900, 2 Fraser, 1044).

In *M'Nicol* v. *Speirs*, 1899, 1 Fraser, 604, the special rule

provided that if a shot was lighted and did not explode, no person should enter the place where it had been lighted until thirty minutes should have elapsed. The applicant had lighted the train connected with a shot, and retired to a place of safety, and six minutes having elapsed without any explosion, he returned to examine the shot-hole, when the shot exploded and caused the injury for which he sought compensation. The Sheriff found that the applicant was not aware of the rule in question, and that it was not generally observed in the mine, though there was a printed copy of the special rules exposed to view. On a case stated, the Court of Session confirmed the opinion of the Sheriff that the failure of the applicant to inform himself of the rule was not serious and wilful misconduct (see also *Fullerton* v. *Logue*, 1901, 38 Sc. L. R. 738, C. of Sess.).

In *Guthrie* v. *Boase Spinning Co.*, 1901, 38 Sc. L. R. 483, the applicant was employed in a spinning-mill, and the injury was caused by his attempting to clean machinery in motion. The Sheriff found that there was a strict rule, of which the applicant had knowledge, and which was generally observed in the mill, that no cleaning should take place unless the machinery was stopped. The Court of Session confirmed his opinion that the injury was due to serious and wilful misconduct.

In *Glasgow and S. W. Rail. Co.* v. *Laidlaw*, 1900, 2 Fraser, 708, the Court of Session held that, on the facts found by the Sheriff, there was no question of law for its consideration, and accordingly refused to order him to state a case. The facts were shortly as follows:—A landslip having occurred on the respondent company's railway, the deceased and another man were employed by the company as night watchmen, it being the duty of one of them to remain at the site of the landslip, where a fire was lighted, and the other to stand about 500 yards down the line in order to warn approaching trains in the event of the landslip increasing. It was left to the men to arrange which post each should occupy, and it was proved that early in the morning of the day when the accident happened, the deceased left his station down the line and joined the other man at the fire. The latter fell asleep, and on waking found that the deceased had been killed by a train. The Sheriff

found that it was not proved that the deceased was asleep, or that he was guilty of serious and wilful misconduct, or, even if he was, that the action was attributable to such misconduct.

Rees v. *Powell Duffryn Steam Coal Co.*, 1900, 64 J. P. 164, is a case where the Court of Appeal reversed the decision of the County Court Judge, on the ground that there was no evidence to justify his finding that the accident was attributable to the serious and wilful misconduct of the workman. But the decision is of no importance, because there was really no evidence of any misconduct at all.

The foregoing cases appear to establish—(1) That the question whether an accident is attributable to serious and wilful misconduct is in nearly every case a pure question of fact, upon which the decision of the arbitrator is final, provided there is any evidence in support of it; and (2) that the breach of a known statutory rule does not necessarily amount to such misconduct. According to the decision of the Court of Session in *Dailly* v. *Watson*, the breach of such a rule may be so obviously serious as to amount to serious and wilful misconduct in point of law, but it is not easy to reconcile that ruling with the decision of the Court of Appeal in *Rumboll* v. *Nunnery Colliery Co.*, and at all events, it can only apply in very exceptional cases.

The following cases, the facts of which have already been stated in discussing the meaning of the words "out of and in the course of the employment" (*ante*, pp. 12—19), may also be referred to :—In *Lowe* v. *Pearson*, [1899] 1 Q. B. 261; *Smith* v. *L. & Y. Rail. Co.*, [1899] 1 Q. B. 141; *Rees* v. *Thomas*, [1899] 1 Q. B. 1015; *Harrison* v. *Whitaker*, 1899, 16 T. L. R. 108; *Todd* v. *Caledonian Rail. Co.*, 1899, 1 Fraser, 1047; and *McNicholas* v. *Dawson*, [1899] 1 Q. B. 773, it was held that the accident was not attributable to serious and wilful misconduct; and in *Callaghan* v. *Maxwell*, 1900, 2 Fraser, 420, that it was.

(3) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the employment is one to which this Act applies), or as to

the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration, in accordance with the Second Schedule to this Act.

"If not settled by agreement."—An agreement settling the amount and duration of compensation will operate as a bar to subsequent proceedings for an arbitration under the Act, even if such agreement was entered into under a mistake as to the nature or extent of the injury (*Dornan* v. *Senior*, 1900, 38 Sc. L. R. 70). In this case the Court of Session held that the acceptance of a certain sum in settlement of the claim for compensation precluded the workman from subsequently demanding an arbitration, though he had signed the discharge on the faith of the report of a medical man as to his condition which subsequently turned out to be erroneous.

Where the amount of compensation has been settled by an agreement, a memorandum of such agreement should be sent to the registrar of the County Court for the district in which the person entitled to compensation resides, to be recorded by him in the special register, in pursuance of paragraph 8 of the Second Schedule; and the agreement will then be enforceable as a County Court judgment (*post*, pp. 150, 151). In *Cochrane* v. *Traill*, 1900, 2 Fraser, 794, an action was brought on an alleged admission of liability and agreement to pay the plaintiff compensation at a certain rate per week for so long as he should continue incapacitated, or until the rate should be varied or the weekly payments redeemed under Sched. I., pars. 12 and 13, and it was averred that the defendant had made the weekly payments in pursuance of the agreement for more than six months, and had then denied liability. The Court of Session dismissed the action, the Lord Justice-Clerk and Lord Trayner holding that it was an action to enforce payment of compensation under the Act, and therefore was out of time (see sect. 2 (1), *post*, p. 44); Lord Young that it was an action on the agreement, and not incompetent, but that it was irrelevant because by Scotch law such an agreement was required to be

in writing. The Lord Justice-Clerk and Lord Low expressed the opinion that an agreement to pay compensation under the Act, though not in writing, might be enforced by lodging a memorandum with the Sheriff under Sched. II. (8), and getting it registered, and that this might be done though more than six months had elapsed from the time of the accident (see, however, on this point, *Marno* v. *Workman*, 1899, 34 Ir. L. T. R. 14, cited *post*, p. 149).

As to the effect of an agreement or admission of liability as an estoppel from setting up the time limit, see *post*, p. 49.

"Subject to the provisions of the First Schedule."—The scale of compensation, by which the arbitrator is bound, is fixed by paragraphs 1 and 2 of the First Schedule (see *post*, pp. 118 *et seq.*).

Paragraph 3 requires a workman who has given notice of an accident to submit himself for medical examination at the request of the employer, and provides that if he refuses to do so or obstructs the examination, his right to compensation and all proceedings in relation thereto shall be suspended until the examination takes place (*post*, pp. 132, 133).

Paragraphs 4—10 contain provisions as to payment of the compensation in the case of death, and as to the investment of sums allotted to dependants.

Paragraph 11 requires workmen in receipt of weekly payments, if requested, from time to time to submit themselves for medical examination, otherwise the weekly payments are to be suspended until the examination takes place (*post*, pp. 136, 137).

Paragraph 12 provides for the review of any weekly payment (*post*, p. 137); and paragraph 13 for the redemption thereof (*post*, p. 138).

Paragraph 14 protects weekly payments from any assignment, charge, attachment, or set-off.

"Arbitration in accordance with the Second Schedule."—The provisions of the Second Schedule relate to the following matters :—

1. The arbitration tribunal (pars. 1, 2, 7, and 9);

2. The powers of the arbitrator (pars. 3, 4, 6) ;

3. The submission of questions of law for the opinion of the County Court Judge, and appeals to the Court of Appeal (par. 4) ;

4. The remuneration of an arbitrator appointed by the County Court Judge (par. 3) ;

5. The making of Rules of Court (pars. 5, 6, 8, 9, 10, 12) ;

6. Costs (pars. 6, 11 and 12) ;

7. Registration and enforcement of awards and agreements for compensation (par. 8) ;

8. The County Court district in which proceedings are to be taken, and the transfer of proceedings (pars. 8 and 9) ;

9. Appointment of medical referees (par. 13) ;

10. Application of the schedule to Scotland and Ireland (pars. 14—16) ;

Rules of Court, which may be cited as the Workmen's Compensation Rules, 1898 to 1900, have been made in pursuance of the powers given by the schedule. These rules relate almost entirely to arbitrations in the County Court. They are set out *in extenso* in Appendix A.

Matters to be determined by arbitration.—The matters which may have to be determined by the arbitrator are as follows :—

1. The liability of the respondent to pay compensation to the applicant (sect. 1 (3)). This may involve the questions—

(a) Whether the employment is one to which the Act applies (sect. 7) ;

(b) Whether the injury was caused by accident (sect. 1 (1)) ;

(c) Whether it arose out of and in course of the employment (*Ib.*) ;

(d) Whether the respondent is "the undertaker" (sect. 7 (1)) ;

(e) Whether the applicant was disabled by the injury from earning full wages for two weeks (sect. 1 (2) (a)) ;

(f) Whether the injury was attributable to the serious and wilful misconduct of the workman (*Ib.* (c)) ;

(g) Whether due notice of the accident has been given, and a claim for compensation made within six months, and

whether the employer was prejudiced by want of due notice (sect. 2);

2. The amount and duration of compensation (sect. 1 (3); Sched. I. (1) and (2));

3. In the case of death, the question who are the dependants, and the amount of compensation payable to each dependant (Sched. I. (5));

4. The termination, diminution, or increase of a weekly payment on a review under Sched. I. (12);

5. The amount to be paid for the redemption of a weekly payment under Sched. I. (13);

6. The investment or other application of sums allotted as compensation to dependants, or of a sum paid for the redemption of a weekly payment (Sched. I. (6)—(9), (13));

7. The payment of the costs of and incident to the arbitration and proceedings connected therewith, and the determination of the amount of costs to be awarded to the solicitor or agent of the applicant (Sched. II. (6), (12));

8. The liability of a contractor or other person to indemnify the undertaker under sect. 4 or 6 of the Act. This question can only be determined by consent of the person against whom indemnity is claimed, except where the claim is against a contractor under sect. 4, and he is joined as a respondent, and is found to be liable to pay compensation to the applicant under the Act (see note to sect. 4, *post*, p. 58).

The arbitration tribunal. — There are six possible tribunals before which a matter to be settled by arbitration under the Act may come for decision—

1. If any committee, representative of the employer and his workmen, exists, with power to settle matters under the Act, the matter must be referred to that committee, unless either party objects by notice in writing sent to the other party before the committee meet to consider the matter (Sched. II. (1)). If neither party so objects, the committee may either hold the arbitration themselves, or may in their discretion refer it to arbitration under the Act, but they cannot in the latter case appoint the arbitrator (*Ib.*).

2. If either party so objects, or there is no such committee, or the committee so refers the matter, or fails to settle it within three months from the date of the claim, the matter may be settled by a single arbitrator agreed on by the parties (Sched. II. (2)).

3. Failing such agreement, the matter must be settled by the County Court Judge of the district in which all the parties concerned reside; or, if they reside in different districts, the district in which the accident out of which the matter arose occurred, subject to any transfer in pursuance of W. C. R. 61 (Sched. II. (2), (9)). Provided that if the Lord Chancellor so authorises, the County Court Judge may, instead of hearing and determining the matter himself, appoint a single arbitrator to settle it according to the procedure prescribed by the Workmen's Compensation Rules (*Ib.*).

4. The matter may be settled by a single arbitrator appointed by the County Court Judge as above-mentioned.

5. Where an action brought by a workman to recover damages at Common Law, or under the Employers' Liability Act, is dismissed, and the plaintiff asks for an assessment of compensation under this Act in pursuance of sub-sect. 4 (*post*, p. 41), the Judge who tried the unsuccessful action will be the arbitrator.

6. In the case of the death or refusal or inability to act of an arbitrator, a new arbitrator may be appointed by a Judge of the High Court in Chambers (Sched. II. (7); see *post*, p. 147).

Arbitrators appointed by the County Court Judge will be paid out of moneys to be provided by Parliament in accordance with regulations made by the Treasury (*Ib.* (3)). No provision is made as to the payment of committees or arbitrators agreed on by the parties.

Powers of arbitrator.—The Arbitration Act, 1889, does not apply to any arbitration under the Act; but an arbitrator appointed by the County Court Judge has, for the purposes of the Act, all the powers of a County Court Judge (Sched. II. (3) and (4)). The County Court Judge, or an arbitrator appointed by him, has, for the purpose of an arbitration under the Act, the same powers of

procuring the attendance of witnesses and the production of documents as if the claim for compensation had been made by plaint in the County Court (*Ib.* (4)).

These powers are not given to a committee or an arbitrator agreed on by the parties. A committee or agreed arbitrator may administer the oath to witnesses voluntarily attending, but cannot enforce their attendance or compel them to answer questions.

As to the submission of questions of law for the opinion of the County Court Judge, see *post*, p. 143; and as to the power of the arbitrator to refer to a medical referee for report on any matter material to any question arising in the arbitration, see *post*, p. 154.

Arbitrations in the County Court.—Most of the disputes arising under the Act are referred to the arbitration of the County Court Judge, which is the most satisfactory tribunal, having regard to the difficulty of many of the questions of law involved. The proceedings must be taken in the County Court of the district in which all the parties concerned reside, or, if they reside in different districts, the district in which the accident occurred (Sched. II. (9)); but if the Judge is satisfied that the matter can be more conveniently proceeded with in any other Court, he may order it to be transferred to such other Court (*Ib.*; Rule 61, W. C. R., *post*, p. 218).

The duty of the County Court Judge under the Act, and of an arbitrator appointed by him, are part of the duties of the County Court (Sched. II. (10)). The procedure in arbitrations in the County Court, whether before the Judge or an arbitrator appointed by the Judge, is regulated by the Workmen's Compensation Rules, 1898 to 1900, which are to be read and construed with the County Court Rules (Rule 1 (4)). The Interpretation Act, 1889, applies for the interpretation of the rules (*Ib.* (3)).

All the proceedings in an arbitration in the County Court are recorded in a special register kept by the registrar (Rule 65).

No court fee is payable by any party in respect of an arbitration in the County Court prior to the award (Sched. II. (11)).

Parties to the arbitration.—The party making an application for arbitration in the County Court is called "the applicant;" and all other persons whose presence at the arbitration is necessary to enable the Judge or arbitrator effectively and completely to adjudicate upon and settle all the questions involved must be made parties to the application, and are called "the respondents" (Rule 2 (1), W. C. R.).

Where the undertakers and a contractor are alleged to be liable, both or either of them may be made respondents at the option of the applicant (*Ib.* (2)); and all persons who might be joined as plaintiffs in an action in the County Court may be joined as applicants in an arbitration (Rule 3).

As to applications by dependants, and persons claiming in respect of medical and burial expenses, see *post*, pp. 122, 134.

The provisions of the County Court Rules as to parties suing and defending on behalf of other persons having the same interest, and as to persons under disability and partners suing and being sued, apply, with the necessary modifications, to arbitrations under the Act (Rule 7, W. C. R.: these rules are set out in the note to Rule 7 in Appendix A).

Application for arbitration.—The application for an arbitration is made by the applicant filing with the registrar a request for arbitration (Rule 8). Such request will be entered and numbered as a plaint, and will, with the subsequent proceedings, be recorded in the Special Register (*Ib.*).

The application may be made either by the person claiming compensation or by the employer (*Powell* v. *Main Colliery Co.* [1900] A. C. 366). Where it is made by the person claiming compensation, particulars must be appended to the request, containing—

(a) A concise statement of the circumstances under which the application is made, and the relief or order which the applicant claims;

(b) The date of service of notice of the accident, or, if notice has not been served, the reason for the omission; and,

(c) The full names and addresses of the respondents, and of the applicant, and of the applicant's solicitor (if any) (W. C. R. 9).

A copy of the notice of the accident must be appended to the particulars, or the reason for omitting to comply with the rule stated in the particulars (Rule 10 (2)).

For Forms of Request and Particulars, see Forms 1 to 4.

Where the application is made by the employer, the workman, or the legal personal representative (if any) and persons claiming to be dependants, or the other persons on whose behalf the claim was made, must be made respondents (Rule 10A (1)); and the particulars to be appended to the request must contain—

(a) A concise statement of the circumstances under which the application is made;

(b) A statement whether the applicant admits his liability to pay compensation, or denies such liability, wholly or partially, with (in the latter case) a statement of the grounds on and extent to which he denies liability;

(c) A statement of the matters which the applicant desires to have settled by arbitration; and

(d) The full names and addresses of the parties, and of the applicant's solicitor (if any) (Rule 10A (2)).

A copy of the request and particulars for each respondent, and a copy for the Judge or arbitrator, must be delivered to the registrar (Rule 11).

Fixing day and place for arbitration before Judge.—If the Judge decides to settle the matter himself, he will appoint a day and hour for proceeding with the arbitration so as to allow the copies of the request and particulars to be served on the respondents at least fifteen clear days before the day so appointed (Rule 13 (1)). The arbitration will be held at the place where the Court is held, unless any party desires to have it held at some other place provided by him within the district of the Court, and to the satisfaction of the Judge, and undertakes to pay all the expenses occasioned thereby (*Ib.* (2)—(5)).

On the day for proceeding with the arbitration being fixed, the registrar will give notice to the applicant of the place, day and hour appointed (Form 6), and will issue copies of the request and particulars, under the seal of the Court, for service on the

respondents, together with notices stating the place, day and hour appointed for the arbitration, and that if the respondents do not attend such order will be made and proceedings taken as the Judge thinks just and expedient (Form 7) (Rule 14).

These copies and notices must be served on the respondents in accordance with Rule 15 (W. C. R.).

Stay of proceedings.—Where several requests for arbitration are filed by different applicants against the same respondent in the same Court in respect of matters arising out of the same circumstance, the respondent may, on filing an undertaking to be bound, so far as his liability to pay compensation is concerned, by such one of the arbitrations as the Judge selects, apply under Order 8, Rule 2 of the County Court Rules for a stay of proceedings in the other arbitrations until an award is made in the selected one; and the proceedings will then be regulated, with the necessary modifications, by Order 8, Rules 2—6 of the County Court Rules (W. C. R. 16: these rules are set out in the note to Rule 16 in Appendix A).

Answer by respondents.—If any respondent desires to disclaim any interest in the subject-matter of the arbitration, or considers that the applicant's particulars are inaccurate or incomplete, or desires to bring any fact or document to the notice of the Judge, or intends to rely on the fact that due notice of the accident was not given, or that the claim for compensation was not made in time, or intends to deny (wholly or partially) his liability to pay compensation, he must, ten clear days at least before the day fixed for the arbitration, file an answer (Form 8), stating his name and address and that of his solicitor (if any), and stating that he disclaims any interest, or in what respect the particulars are defective, or stating concisely any fact or document which he desires to bring to the notice of the Judge, or on which he intends to rely, or the grounds on and extent to which he denies liability (Rule 17 (1)).

Copies of the answer must be filed for the applicant and the Judge and for each of the other respondents (*Ib.* (2)).

Subject to any answer so filed, the applicant's particulars and the liability to pay compensation will be taken to be admitted:

provided that the Judge may, on such terms as he thinks fit, either proceed with the arbitration and allow the respondent to avail himself of any matter of which he ought to have given notice by filing an answer, or adjourn the arbitration to enable him to file such answer (*Ib.* (3) and (4)).

In *Silvester* v. *Cude*, 1899, 15 T. L. R. 434, the respondent did not file an answer as required by Rule 17, and on this ground the Judge at the hearing refused to allow him to give evidence that the building about which the accident happened was not thirty feet high, and found that the building did exceed that height. The Court of Appeal dismissed the respondent's appeal, holding that although the Judge as arbitrator might, if he thought fit, take either of the courses mentioned in Rule 17 (4), where the respondent failed to file an answer, he was not bound to take either of such courses.

The provisions of Rule 17 apply, with the necessary modifications, to cases in which the request for arbitration is filed by the employer; but in such a case a respondent who fails to file an answer is not taken to admit the truth of any statement in the applicant's particulars in which his liability to pay compensation is wholly or partially denied (Rule 17 (5)).

Submission to award or payment into Court.—Where a respondent from whom compensation is claimed admits liability, he may at any time before the day fixed for the arbitration—

(a) Where the application is made by an injured workman, file a notice that he submits to an award for payment of a weekly sum specified in the notice; or

(b) Where the application is made on behalf of dependants, or for settlement of the sum payable in respect of medical and funeral expenses, pay into Court such sum as he considers sufficient to cover his liability (Rule 18 (1); Form 9).

Notice of the submission or payment into Court must within twenty-four hours be sent by the registrar to the applicant, and to the other respondents (if any) (*Ib.* (2) ; Forms 10, 11).

If the applicant is a workman, and accepts the weekly payment offered, he must notify such acceptance in writing to

the registrar and the respondent within a reasonable time before the day fixed for the arbitration (*Ib.* (3); Form 12).

If the application is made on behalf of dependants, or is in respect of the medical and funeral expenses, and the applicant is willing to accept the sum paid into Court in satisfaction of his claim, he must in like manner give written notice of his acceptance; and where there are other respondents, he must also notify them, and if any of such respondents are willing to accept the sum paid into Court, they must in like manner give notice to the registrar and the applicant and the other respondents (*Ib.* (4); Form 12).

If the applicant is a workman and accepts the weekly payment offered, or if in any other case all parties give notice of acceptance of the sum paid into Court, the Judge may forthwith make an award of such weekly sum, or with the consent of all parties make an award for the apportionment and application of the sum paid into Court (*Ib.* 5 (a) (b) (i.)). If the applicant and other respondents do not agree as to the apportionment of the sum paid into Court, the arbitration will proceed as between them (*Ib.* 5 (b) (ii.)).

In any such case the Judge may, in his discretion, order the payment by the respondent of such costs as were properly incurred before the submission or payment into Court, including any items which might have been allowed at the hearing of the arbitration (*Ib.* (c)). An applicant or any respondent intending to apply for such costs must give notice of such intention in his notice of acceptance (*Ib.* (d); Form 12).

In default of notice of acceptance by all parties, the arbitration may proceed, but if no greater weekly payment or compensation is awarded than was offered or paid into Court, the respondent is not liable to pay any further costs than he might have been ordered to pay if such weekly payment or sum paid into Court had been accepted, and may be allowed costs incurred by him after the submission or payment into Court. The Judge may also order costs incurred after notice of payment into Court by any party who has given notice of acceptance to be paid by any other party who has not given such notice (Rule 18 (6)).

The above provisions, with the necessary modifications, apply where an employer who files a request for arbitration admits liability (*Ib.* (7)).

Where indemnity claimed.—As to the procedure where indemnity is claimed against a contractor or any other person under sect. 4 or sect. 6 of the Act, see *post*, pp. 57, 58, 62.

Procedure on arbitration.—Subject to any special provisions of the Rules, the procedure in the arbitration is the same as in a County Court action without a jury; provided that the burden of proof of any facts not admitted is the same, whoever the party may be by whom the request for arbitration is filed (Rule 24 (1) and (2)).

Appearance of parties.—As to the appearance of parties to the arbitration by other persons, see note to Sched. II. (5), *post*, p. 145.

Medical referee.—As to the appointment of a medical referee to report as to the condition of a workman claiming compensation, see note to Sched. II. (13), *post*, p. 154.

The award.—The award of the Judge on any arbitration shall be in writing (Form 14), and shall be sealed, filed, and served on all persons affected thereby, and shall be enforceable in the same manner as a judgment or order of the Court (Rule 26 (1)). The Judge has power at any time to correct any clerical mistake or error in the award arising from any accidental slip or omission (*Ib.* (2)).

Proceedings before arbitrator appointed by Judge.—If the Lord Chancellor, either by a general order with respect to any County Court, or in any particular case, authorises the settlement of any matter by an arbitrator appointed by the Judge, the Judge may, with the approval of the Lord Chancellor, appoint, by writing under his hand, and filed in the Court, an arbitrator to settle such matter (Rule 27 (a)—(d)).

When a new arbitrator is appointed by the High Court under Sched. II. (7) in place of an arbitrator appointed by the County Court Judge, the order appointing such arbitrator must be

lodged with the registrar, and thereupon the arbitration will proceed as if such arbitrator had been appointed by the County Court Judge (*Ib.* (e)).

On the appointment of an arbitrator by the County Court Judge, the registrar will transmit a copy of the request for arbitration and a copy of the appointment to the arbitrator; and upon the day for proceeding with the arbitration being fixed, the arbitration will proceed in the same manner as an arbitration before the Judge (Rules 28, 29 (1)). Provided that in any case coming within the provisions of Rule 18 (5) (a) or (b) (i), or in any other case in which, after the appointment of the arbitrator, but before the day fixed for the arbitration, the parties agree upon an award, the Judge may, with the consent of all parties, settle the matter himself; and provided that any application for the enforcement of or for staying proceedings on an award must be made to the Judge (Rule 29 (2) (a) and (b)).

Where an award has been made by an arbitrator appointed by the Judge, any subsequent arbitration in relation to any matter settled by the award, must be taken before the same arbitrator if his services are available, unless the Judge otherwise directs (Rule 31).

Submission of questions of law.—As to the submission of questions of law by an agreed or appointed arbitrator for the opinion of the County Court Judge, see note to Sched. II. (4), *post*, p. 143.

Costs.—As to the costs of the arbitration, see note to Sched. II. (6), *post*, p. 145; and as to the determination of the amount of costs to be paid to the solicitor or agent of the person to whom the compensation is payable, see note to Sched. II. (12), *post*, p. 153.

Appeals.—As to appeals to the Court of Appeal, see *post*, pp. 143, 144. The County Court Judge has no jurisdiction to grant a new trial, or reopen an arbitration determined by himself (*Mountain* v. *Parr*, [1899] 1 Q. B. 805).

Proceedings subsequent to award.—As to the recording and enforcement of the award, see Sched. II. (8) and (9), and

notes, *post*, pp. 148—151; and as to the review and redemption of weekly payments, see Sched. I. (12) and (13), and notes, *post*, pp. 137—139.

Applications against insurers.—See sect. 5 and notes, *post*, p. 59.

Filing and service of documents and notices.—See Rule 62 (W. C. R.).

Procedure generally.—The provisions of Order 23, Rule 4, and Order 51, Rules 1—6 of the County Court Rules, as to parties acting by solicitors, and as to substituted service and notice in lieu of service, apply to proceedings under the Act (Rule 63, W. C. R.: these provisions are appended in a note to Rule 63 in Appendix A); and with regard to all matters not specially provided for under the Workmen's Compensation Rules, the same procedure is to be followed and the same provisions apply, as far as practicable, as in similar matters under the County Courts Act and Rules (W. C. R. 64).

(4.) If, within the time hereinafter in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the Court in which the action is tried shall, if the plaintiff shall so choose, proceed to assess such compensation, and shall be at liberty to deduct from such compensation all the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act.

In any proceeding under this sub-section, when the Court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such

certificate shall have the force and effect of an award under this Act.

Compensation after unsuccessful action.—"Within the time hereinafter in this Act limited for taking proceedings," *i.e.*, within six months from the occurrence of the accident causing the injury, or, in the case of death, within six months from the time of death (Sect. 2 (1)).

An application under this sub-section for the assessment of compensation under the Act must be made to the Judge who tried the unsuccessful action at the time of its dismissal. The workman cannot, if the action is dismissed without any application being made for the assessment of compensation, subsequently initiate independent proceedings by a request for arbitration. If he could, he would be able, by waiting until the action was at an end, and then making a fresh claim under the Act, get compensation without having the costs caused by his bringing the action deducted (*Edwards* v. *Godfrey*, [1899] 2 Q. B. 333, C. A.; *Baird* v. *Higginbotham*, 1901, 38 Sc. L. R. 479, C. of Sess.).

In *Little* v. *MacLellan*, 1900, 2 Fraser, 387, where the workman had accepted weekly payments from his employer, and given receipts which the Court of Session held imported an election to take compensation under this Act, and had then brought an action under the Employers' Liability Act, the Court dismissed the action, and remitted it to the Sheriff under this sub-section to determine the amount of compensation due under this Act (see also *Henderson* v. *Glasgow Corporation*, 1900, 2 Fraser, 1127, C. of Sess.).

The Court "shall be at liberty to deduct from such compensation all the costs," etc. This appears to make the deduction of the costs of the unsuccessful action a matter for the discretion of the Judge who tried such action.

Certificate of compensation.—The form of the certificate to be given under this sub-section is set out in the Appendix to the Rules (W. C. R. 48; Form 22). On being sent to the registrar of the County Court for the district in which the person entitled to the compensation resides, it is to be registered

by him without fee, and is then enforceable as a County Court judgment (Sched. II. (8), W. C. R. 48 (2); *post*, p. 150).

(5) Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines or factories, or the application of any such fine, but if any such fine, or any part thereof, has been applied for the benefit of the person injured, the amount so applied shall be taken into account in estimating the compensation under this Act.

The Factory and Workshop Act, 1901 (1 Edw. VII. c. 22), s. 136, repealing and re-enacting sect. 82 of the Factory and Workshop Act, 1878, as amended by the Factory and Workshop Act, 1895, s. 13, provides that if any person is killed, or dies, or suffers any bodily injury or injury to health, in consequence of the occupier of a factory or workshop having neglected to observe any provision of the Act or any regulation made in pursuance of the Act, the occupier of the factory or workshop shall be liable to a fine not exceeding £100, and, in the case of a second or subsequent conviction in relation to a factory within two years from the last conviction for the same offence, not less than £1 for each offence, and the whole or any part of the fine may be applied for the benefit of the injured person or his family, or otherwise as the Secretary of State determines: Provided that in the case of injury to health the occupier shall not be liable under the section unless the injury was caused directly by the neglect: Provided also that the occupier shall not be liable to fine under the section if an information against him for not observing the provision or regulation to the breach of which the death or injury was attributable, has been heard and dismissed previous to the time when the death or injury was inflicted.

The Coal Mines Regulation Act, 1887, s. 70, provides that where a fine is imposed under the Act for neglect to send notice of any explosion or accident, or for any offence which has occasioned loss of life or personal injury, a Secretary of State may (if he thinks fit) direct such fine to be paid to or distributed among the persons injured and the relatives of any person

whose death was caused by the explosion, accident, or offence, or among some of them: Provided that such persons did not in his opinion occasion or contribute to occasion the explosion or accident, and did not commit and were not parties to committing the offence.

The Metalliferous Mines Regulation Act, 1872, s. 38, contains the same provision, with the substitution of "penalty" for "fine."

2.—*Time for taking proceedings.*—(1) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death. Provided always that the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake or other reasonable cause.

(2) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(4) The notice may also be served by post by a

registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(5) Where the employer is a body of persons corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer at, the office, or, if there be more than one office, any one of the offices of such body.

Form and requisites of notice of the accident.—The notice of the accident required by this section must be in writing, and must contain in writing all the particulars required by sub-sect. 2, namely, the name and address of the workman injured, and the cause and date of the injury, in order to operate as a valid notice under the section. There has been no decision to this effect under this Act, but under the Employers' Liability Act, 1880, s. 7, the terms of which are practically identical with the above sub-sects. 2 to 5, it has been so decided, on the ground that the terms of that section could only refer to a written notice (*Moyle* v. *Jenkins*, 1881, 8 Q. B. D. 116; *Keen* v. *Millwall Dock Co.*, 1882, 8 Q. B. D. 482, C. A.). In the latter case, the workman, on the day of the injury, made a verbal report of the accident to his employer's inspector, who took down the details in writing, and forwarded them to the employer's superintendent. Subsequently, within the time limited for giving notice, the workman's solicitor wrote a letter to the employer stating that he was instructed by such workman, whose name and address was given, to apply for compensation for injury received on the employer's premises, "particulars of which have already been communicated to your superintendent." It was unanimously held by the Court of Appeal

that the letter did not refer to the written report made to the superintendent so as to incorporate its contents, and that the letter was not a notice in compliance with the Act. The Court was divided in opinion as to whether two or more writings referring to one another, and containing the requisite particulars, would constitute a valid notice.

It is a sufficient statement of the cause of the injury if it is such a statement as "will enable the employer to have substantial notice of what has occurred, so that he may make proper inquiries, and may come to trial prepared to meet the plaintiff's case" (*Clarkson* v. *Musgrave*, 1882, 9 Q. B. D. 386). This also was a case under the Employers' Liability Act. The notice stated that the plaintiff was injured in consequence of the defendants' negligence in leaving a certain hoist in their warehouse unprotected, whereby her foot was caught in the casement of the hoist and crushed. At the trial the jury found that the injury was due to the negligence of the superintendent in allowing the plaintiff, a young girl, to go into the hoist alone; and it was held that the notice sufficiently stated the cause of injury (see also *Stone* v. *Hyde*, 1882, 9 Q. B. D. 76).

It is not necessary that the workman should himself give notice of the accident. It is sufficient if it is given by any other person on his behalf, or in case of death, on behalf of the dependants.

For forms of notice of accident, see APPENDIX D.

Within what time notice to be given.—Notice of injury under the Employers' Liability Act must be given within six weeks after the accident. The Workmen's Compensation Act does not fix any definite time for giving notice, but requires it to be given as soon as practicable after the happening of the accident, and, in all cases, before the workman has voluntarily left the employment in which he was injured (sub-sect. 1). In a Scotch case (*Shearer* v. *Miller*, 1899, 2 Fraser, 114), where the accident happened on the 24th February, and notice was not given until the following 13th March, it was held by the Sheriff that it had not been given "as soon as practicable," and therefore did not satisfy the

requirements of the Act (see also *M'Lean* v. *Carse*, 1899, 1 Fraser, 878, C. of Sess.).

Want of or defect or inaccuracy in notice.—The effect of the proviso in sub-sect. 1 is that the right of the workman to compensation is not affected by the want of notice of the accident, or by any defect or inaccuracy in such notice, where such want, defect or inaccuracy was occasioned by mistake or other reasonable cause, whether the employer is thereby prejudiced in his defence or not, nor in any case unless the employer is so prejudiced.

In *M'Lean* v. *Carse*, 1899, 1 Fraser, 878, a Scotch case, where no notice had been given until after three weeks had elapsed from the date of the injury, and the workman had left his employment, the Sheriff dismissed the claim for compensation on the ground that the defence of the employer was necessarily prejudiced by the delay in giving notice, but the Court of Session held that it was open to the workman to prove that the employer was not in fact prejudiced, and sent the case back.

Under the Employers' Liability Act, the onus of proving that the defendant is prejudiced in his defence by a defect or inaccuracy in the notice of injury is on the defendant (see *Stone* v. *Hyde*, 1882, 9 Q. B. D. 76); but it has been held by the Court of Session that, under the Workmen's Compensation Act, it is for the workman to prove that the employer is not prejudiced by a failure to give due notice, or that such failure was occasioned by mistake or other reasonable cause (*Shearer* v. *Miller*, 1899, 2 Fraser, 114). Very slight evidence that the employer is not prejudiced is, however, sufficient to shift the onus of proof on to him (*Ib.*); and in the case of a mere defect or inaccuracy, the fact that he is not prejudiced will be assumed if the notice substantially conveys to his mind what has occurred (see *Clarkson* v. *Musgrave*, 1882, 9 Q. B. D. 386; *Stone* v. *Hyde*, *supra*; *Previsi* v. *Gatti*, 1888, 4 T. L. R. 487; *Carter* v. *Drysdale*, 1883, 12 Q. B. D. 91).

Limit of time for proceedings.—It is not necessary in order to satisfy the provisions of sub-sect. 1, that a request for arbitration should be filed within six months from the date

of the accident or death. It is sufficient if a definite claim for compensation is made within that period.

In *Powell* v. *Main Colliery Co.*, [1900] A. C. 366, a notice of claim was sent within six months of the accident, but the request for arbitration was not filed until after the six months had expired. The notice of claim was as follows :—"To the Main Colliery Co., Ltd., Skewen. Take notice that I claim the sum of 15*s.* per week from the 4th day of January, 1899, until such date as I shall be able to resume work, as compensation for injuries received by me on the 21st day of December, 1898, at your colliery at Bryncoch. WM. POWELL." The Court of Appeal held that "claim for compensation" in the sub-section meant a judicial claim, and that as the proceedings for the assessment of compensation had not been commenced within the six months, they were not in time, and set aside the award of the County Court Judge. On appeal to the House of Lords, the decision of the Court of Appeal was reversed, and the award restored, the cases of *Bennett* v. *Wordie*, 1899, 1 Fraser, 855, and *Marno* v. *Workman*, 1899, 33 Ir. L. T. R. 183, decided in Scotland and Ireland respectively, being distinguished.

In *Bennett* v. *Wordie*, a letter had been sent by a law-agent on behalf of the father of the deceased workman within six months of the death, giving notice of the accident, and stating, "I am instructed by his father to intimate that he holds you liable for compensation and solatium. This notice is given in the terms of the statutes." The Court of Session held that this was not a claim for compensation within the meaning of the sub-section, but merely notice of an intention to make a claim. In *Marno* v. *Workman* there was a letter giving notice of the accident, and other correspondence in reference to the payment of compensation, but no definite claim for compensation had been made within the six months.

In distinguishing these cases in *Powell* v. *Main Colliery Co.*, it was pointed out by Lord Shand that there the claim was specific, the parties were mentioned, the sum demanded was mentioned, and the date of the accident was mentioned; and the decision of the House of Lords does not necessarily apply to cases where the notice of claim is less definite in its terms.

Where, however, an application for arbitration under the Act is made within the six months, that application is itself a sufficient claim for compensation, though no definite sum has been demanded (*G. N. of Scotland Rail. Co.* v. *Fraser*, 1901, 38 Sc. L. R. 653, C. of Sess.).

"Six months" in the sub-section means six calendar months (52 & 53 Vict. c. 63, s. 3).

Estoppel from setting up time limit.—An employer may be estopped by his conduct from objecting that the proceedings are out of time.

In *Wright* v. *Bagnall*, [1900] 2 Q. B. 240, the accident happened on November 23rd, 1898. On November 26th, the wife of the injured workman was told by the employer's ledger clerk to bring a certificate from the hospital as to her husband's condition in three weeks' time, "when he would be due for compensation," and she would then receive half his wages. At the expiration of the three weeks she received half the weekly wages of her husband, and continued week by week to receive half his wages until September, 1899, either from the employers or an insurance company with whom the employers had a contract of insurance. Meanwhile, from about Easter to Whitsuntide, 1899, negotiations had been going on between the workman and the respondent's manager as to the commutation of the weekly payments, but no settlement was come to. In September, 1899, the weekly payments ceased, and in October the workman filed a request for arbitration under the Act. The County Court Judge held that, although the conduct of the employer was calculated to lull the applicant into a state of false security, he ought to have known what his rights under the Act were, and if he thought that an arrangement had been come to, to have had its terms embodied in a memorandum, and to have registered the memorandum under the Second Schedule, clause 8, and decided that the employers were not precluded from objecting that the proceedings were out of time. On appeal, it was held that there was ample evidence of an agreement that compensation should be paid, the only question left open being that of the amount of such compensation, and that, therefore,

the employers were debarred from setting up the statutory limit. It was held also that the employers were debarred by treating the matter as open to negotiation during the whole of the statutory period of six months. The appeal was accordingly allowed, and the case sent back for the assessment of compensation.

The mere fact of the payment of half-wages is not, however, of itself sufficient to create an estoppel, because such payment may be made from motives of compassion or generosity and not as an acknowledgment of liability. In *Rendall* v. *Hill's Dry Docks, &c. Co.*, [1900] 2 Q. B. 245, the employers paid to the injured workman through an insurance company half his weekly wages for a period of ten months, taking acknowledgments that the money was received "on account of compensation which which may be or become due to me under the Workmen's Compensation Act, 1897," and it was held, distinguishing *Wright* v. *Bagnall*, that there was no evidence of any agreement or admission on the part of the employers that they were liable to pay compensation, and they were therefore not precluded from objecting that the proceedings were out of time.

The objection that the proceedings are out of time ought to be taken by the respondent in his answer in accordance with Rule 17 (1) (W. C. R., Form 8). In *Illingworth* v. *Walmsley*, [1900] 2 Q. B. 142, where this was not done, and the County Court Judge refused to allow an amendment, it was held that the objection was not open to the respondent on an appeal.

3.—*Contracting out.*—(1) If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, is on the whole not less favourable to the general body of workmen and their dependants than the provisions of this Act, the employer may, until the certificate is revoked, contract with any of those workmen that the provisions of the scheme shall be substituted for the

provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

(2) The registrar may give a certificate to expire at the end of a limited period not less than five years.

(3) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring.

(4) If complaint is made to the Registrar of Friendly Societies by or on behalf of the workmen of any employer that the provisions of any scheme are no longer on the whole so favourable to the general body of workmen of such employer and their dependants as the provisions of this Act, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the registrar shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5) When a certificate is revoked or expires any moneys or securities held for the purpose of the scheme shall be distributed as may be arranged between the employer and workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

(6) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Registrar of Friendly Societies.

(7) The Chief Registrar of Friendly Societies shall

include in his annual report the particulars of the proceedings of the registrar under this Act.

Contracting out.—The only contracts by which the operation of the Act can be excluded are those entered into in accordance with the provisions of this section, which requires that some scheme of compensation, benefit, or insurance should be substituted which the Registrar of Friendly Societies, after due inquiry, has certified to be on the whole not less favourable to the general body of workmen and their dependants than the provisions of the Act itself. So that, substantially, contracting out is prohibited.

Sect. 9 (*post*, p. 117) deals with contracts entered into before the Act came into operation. Any such contract by which a workman relinquishes any right to compensation for personal injury is not, for the purposes of the Act, to continue after the time when his contract of service would have determined if notice to determine it had been given at the commencement of the Act.

By Sched. I. clause 15, *post*, where a scheme certified under this section provides for the payment of compensation by a friendly society, the provisions of sects. 8 (1), 16, and 41 of the Friendly Societies Act, 1876, are not to apply to such society in respect of such scheme. The provisions in question prohibit any society registered under that Act from granting to any person an assurance of an annuity exceeding £50 a year, or of a gross sum exceeding £200, and the object of excluding such provisions, in the case of a scheme under this section, is to enable a friendly society to agree, in connection with such a scheme, to pay to a workman or his dependants compensation in excess of those limits.

4.—*Sub-contracting.*—Where, in an employment to which this Act applies, the undertakers as herein-after defined contract with any person for the execution by or under such contractor of any work, and the undertakers would, if such work were executed by workmen immediately employed by them, be liable to pay

compensation under this Act to those workmen in respect of any accident arising out of and in the course of their employment, the undertakers shall be liable to pay to any workman employed in the execution of the work any compensation which is payable to the workman (whether under this Act or in respect of personal negligence or wilful act independently of this Act) by such contractor, or would be so payable if such contractor were an employer to whom this Act applies.

Provided that the undertakers shall be entitled to be indemnified by any other person who would have been liable independently of this section.

This section shall not apply to any contract with any person for the execution by or under such contractor of any work which is merely ancillary or incidental to, and is no part of, or process in, the trade or business carried on by such undertakers respectively.

Employments to which the Act applies.—See sect. 7 (1) and (2), and notes thereto (pp. 63 to 116, *post*).

Undertakers.—As to who are undertakers within the meaning of the Act, see pp. 101 to 107, *post*.

Sub-contracting.—The only persons who are liable to pay compensation under the Act are "undertakers," and this section "contemplates the case of persons who, being undertakers in respect of a particular class of business, substitute for themselves a contractor to do some part of that business, and provides that the workman of such a contractor shall have the same rights against such persons as they would have if employed by them. The reason of such a provision obviously is that, if a person substitutes another for himself to do that which is his own business, he ought not to escape the liability which would have been imposed upon him, if he had done it himself, towards the workmen employed in that business" (per Collins, L.J., in *Wrigley* v. *Bagley*, [1901] 1 K. B. 780, at p. 783).

A sub-contractor of a portion of the work of an undertaker is not himself an undertaker within the meaning of the Act, and therefore is not liable to pay compensation under the Act to workmen employed by him. Thus, in *Cass* v. *Butler*, [1900] 1 Q. B. 777, where a builder, who had contracted with the Leeds Corporation for the erection of an electrical station, sublet the painting work to the respondent, a painter and decorator, and one of the painters employed by the respondent on the work was killed in the course of the employment, it was held by the Court of Appeal, reversing the County Court Judge, that the respondent was not an undertaker, and therefore was not liable to pay compensation to the dependants of the deceased. In this case, compensation ought to have been claimed against the builder under this section (see also *Cooper* v. *Davenport* and *Stalker* v. *Wallace*, cited *post*, p. 106; and compare *Mason* v. *Dean*, cited *post*, p. 106).

It should be noted that this section renders the undertakers liable to the workmen employed by the contractor not only in respect of compensation payable under this Act, but also in respect of any compensation payable by the contractor at Common Law, or under the Fatal Accidents Act, 1846, or the Employers' Liability Act.

Right of indemnity.—The undertakers are to be "entitled to be indemnified by any other person who would have been liable independently of this section." For the right of indemnity to arise there must be some other person who would have been liable.

Now, with regard to compensation payable under this Act, the only persons who are liable are "undertakers," and there is therefore no right of indemnity against a contractor who is not an undertaker (*Cooper* v. *Davenport, Winstanley third party*, 1900, 16 T. L. R. 266). In this case, the respondent D., who had contracted to build a workhouse infirmary, sub-contracted for the whole of the plumbing work with W., and the workman for whose death compensation was claimed was employed by W. The County Court Judge awarded compensation against D., and ordered W. to indemnify him. On an appeal by W., the Court

of Appeal held that, W. being a sub-contractor, and therefore not an undertaker, he was not liable under the Act to pay compensation; and, not being liable to pay the compensation, was not liable to indemnify D.

The right of indemnity given by the section is therefore confined to cases where the undertakers are called upon to pay compensation which would have been payable by the contractor or some other person at Common Law, or under the Fatal Accidents Act or Employers' Liability Act, or where the contractor is himself an undertaker.

"Merely ancillary or incidental."—The undertakers are only liable under this section to workmen employed in work which is a part of, or process in, the trade or business carried on by such undertakers, and is not merely ancillary or incidental thereto.

In *Pearce* v. *L. & S. W. Rail. Co.*, [1900] 2 Q. B. 100, the applicant for compensation was in the employ of a firm who had contracted with the respondent company for alterations in one of the company's stations, and was injured while engaged in the execution of this work. The Court of Appeal, confirming the decision of the County Court Judge, held that the erection and repair of railway stations is no part of, or process in, the business carried on by a railway company, but is merely ancillary or incidental to such business, and that the company was therefore not liable to pay compensation. The primary business of a railway company is to carry passengers and goods, and the erection of stations is not any part of or process in that business (*Ib.*).

This decision, which seems a somewhat strict interpretation of the section, has been followed in Ireland, and lately by a case in Scotland, though at first the Scotch Courts were inclined to take a view more favourable to the workman.

The Irish case referred to is *Brennan* v. *Dublin United Tram. Co.*, [1901] 2 Ir. R. 241, where the erection of coal-hauling machinery at one of the power stations of an electric tramway company was held to be merely ancillary or incidental to the company's business, which was that of running passenger cars through the streets by electric power.

With regard to the Scotch cases, it was held by the Court of Session in *Burns* v. *North British Rail. Co.*, 1900, 2 Fraser, 629, that the fitting up of signals for new sidings which were being constructed in connection with the existing line of the respondent company, was a part of the company's business, and not merely ancillary or incidental thereto; and that the company was therefore liable to pay compensation to the dependants of a workman in the employ of the contractor, who was killed while fitting up signal wires on the main line. "The equipping of the line with signals and maintaining of the signals in good order is of the essence of the business of a railway company. Without that equipment they could not carry on their business" (per the Lord President, at p. 633).

This decision, which seems inconsistent with the *ratio decidendi* of *Pearce* v. *L. & S. W. Rail. Co.*, though it is perhaps distinguishable, was commented upon and doubted by the Court of Session in the later case of *Dundee and Arbroath Rail. Co.* v. *Carlin*, 1901, 38 Sc. L. R. 635, where the deceased workman was killed by a train while engaged in the construction of a wall, which was being constructed under a contract with the company by the deceased's employer in order to prevent the soil from the bank of a cutting falling down and obstructing access to a signal cabin on the company's railway. The Court (Lord Young, *diss.*), approving and following *Pearce* v. *L. & S. W. Rail. Co.*, held that the work was merely ancillary to the company's business, and that the company was not liable to pay compensation.

On the other hand, where a railway company carried goods at rates which included collection and delivery, and contracted with a firm of carting contractors for the collection and delivery, such contractors receiving as remuneration a portion of the rates, it was held that the cartage of goods under the contract was a part of or process in the company's business, and not merely ancillary or incidental thereto, and that the company was liable to pay compensation to the dependants of a deceased servant of the contractors, who died from injuries received while transferring goods from a lorry to a train for transmission by rail (*Greenhill* v. *Caledonian Rail. Co.*, 1900, 2 Fraser, 736, C. of Sess.).

So, where a firm of manufacturers of and dealers in chemical manures and cattle-feeding stuffs contracted with a firm of carting contractors for all the carting work in connection with their factory, it was held that work done under this contract was part of the trade or business carried on at the factory, and not merely ancillary or incidental thereto, and that the manufacturers, being the undertakers, were liable to pay compensation to a servant of the contractors who was injured while engaged in such work (*Bee* v. *Ovens*, 1900, 2 Fraser, 439, C. of Sess.).

The last reported case in the Court of Appeal on the subject under discussion is *Wrigley* v. *Bagley*, [1901] 1 K. B. 780. A firm of cotton spinners contracted for the fixing of a new driving-wheel for a steam-engine belonging to their cotton-spinning factory, and it was held, affirming the decision of the County Court Judge, that the work was merely ancillary or incidental to, and no part of, or process in, their business of cotton spinning.

Procedure on claim for indemnity.—Provisions are made by Rules 19—22 (W. C. R.) by which a respondent claiming indemnity against any person not a party to the arbitration, may bring in such person as a third party; and Rule 23 provides that the like procedure may be adopted where the claim for indemnity is against any other respondent.

The respondent claiming indemnity must, five clear days before the day fixed for the arbitration, file a notice of his claim according to Form 13; and this notice, having been sealed by the registrar, must be served by the respondent, together with a copy of the applicant's request and particulars, and the notice of the place and time fixed for the arbitration, upon the third party, *i.e.*, the person against whom indemnity is claimed (Rule 19).

The third party on being served with such notice has a right to appear at the arbitration, and if he does not do so, he will be deemed to admit the validity of any award made against the respondent as to any matter which the Judge has jurisdiction to decide in the arbitration as between the applicant and respondent (Rule 20). If the third party appears, he may be given leave

to resist the claim of the applicant, or to take such part in the arbitration as the Judge may think proper; and if he obtains leave to resist the claim, costs may be awarded against him (Rule 21 (1) and (2)).

The Judge has no power, except by consent, to make any award against the third party, or to decide any question as to his liability to indemnify the respondent, but he may order that the third party shall not be entitled to dispute the validity of the award as to any matter which the Judge has jurisdiction to decide in the arbitration as between the applicant and respondent (Rule 22 (1)). With the consent of the respondent and third party, the Judge may order any question as to the liability of the third party to be settled by arbitration after the arbitration between the applicant and respondent; or, if the third party admits his liability to indemnify the respondent, and the arbitration results in favour of the applicant, may make an award in favour of the respondent against the third party at the conclusion of the arbitration; and in either case may decide all questions of costs between them (Rule 22 (2)).

Where a respondent claims indemnity against another respondent, a like notice may be issued and the like procedure adopted as if such other respondent were a third party (Rule 23 (1)); but in such a case, if an award is made against the undertakers who have claimed indemnity from the contractor, and it is decided in the arbitration that the contractor is liable to pay compensation under the Act, the Judge may, without any consent or admission of liability on the part of the contractor, make an award of indemnity against him in favour of the undertakers (Rule 23 (2)).

Rule 23 (2) only applies where the contractor is liable to pay compensation under the Act, and therefore the only case in which an award may be made against him under the third party procedure without his consent, is where he is made a respondent and is himself an undertaker within the meaning of the Act (see *Cooper* v. *Davenport*, *ante*, p. 54). Even in this case, it is necessary that notice of the claim for indemnity should be served in accordance with Rules 19 and 23 (1). In *Appleby* v. *Horseley Co.*, [1899] 2 Q. B. 521, where the

contractor was made a respondent as well as the undertakers, and no notice claiming indemnity was given, the Court of Appeal held that such notice was essential, and set aside an award of indemnity made by the County Court Judge under Rule 23 (2).

5.—*Compensation to workmen in case of bankruptcy of employer.*—(1) Where any employer becomes liable under this Act to pay compensation in respect of any accident, and is entitled to any sum from insurers in respect of the amount due to a workman under such liability, then in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company of the company having commenced to be wound up, such workman shall have a first charge upon the sum aforesaid for the amount so due, and the Judge of the County Court may direct the insurers to pay such sum into the Post Office Savings Bank in the name of the registrar of such Court, and order the same to be invested or applied in accordance with the provisions of the First Schedule hereto with reference to the investment in the Post Office Savings Bank of any sum allotted as compensation, and those provisions shall apply accordingly.

(2) In the application of this section to Scotland, the words "have a first charge upon" shall mean "be preferentially entitled to."

Applications against insurers.—The procedure with regard to applications against insurers for the enforcement of a charge under this section is governed by Rules 51—58 (W. C. R.).

The workman claiming to be entitled to a charge under the section may, upon lodging with the registrar of the Court in which the memorandum or award or certificate of compensation is recorded an affidavit (see Form 25) setting forth the circumstances, enter a plaint to obtain payment of the sum on which

he claims a charge, or so much thereof as is sufficient to satisfy the compensation due from the employer to the workman (Rule 51). Thereupon a summons (Form 26) will be issued calling upon the insurers to show cause why they should not pay the amount claimed into Court (Rule 52). The summons, on being duly served on the insurers in accordance with the provisions of Rule 15, binds in the hands of the insurers all sums due, owing or accruing from them to the employer in respect of the compensation which he is liable to pay to the workman under the memorandum, award, or certificate; and the procedure on the summons is the same as that applicable to garnishee proceedings (Rule 53; Forms 28, 29).

It is not necessary in the first instance to give notice of the issue of the summons to the employer or his assignee, or to the official receiver or trustee in bankruptcy of the employer, or in the case of a company, to the liquidator; but the Judge or registrar may at any time direct such notice to be given (Rule 54; Form 27).

When the compensation to which the workman is entitled is a weekly payment, and the employer is entitled to a weekly payment from the insurers, the insurers may be ordered to make such payment direct to the workman, in which case the insurers have the same rights as the employer with respect to the review or redemption thereof (Rule 55).

Two or more sets of insurers may be made parties to one application (Rule 56); and where more persons than one are entitled to compensation, and the sum payable by the insurers is not sufficient to satisfy the whole of the amounts due, such sum may be apportioned (Rule 57 (1)); and for the purpose of such apportionment, awards or memorandums or certificates may be consolidated, and if recorded in different Courts may be transferred (Rule 57 (2)).

Whenever an application may be made under this section, the provisions of Order 25, Rule 52 of the County Court Rules, as to discovery in aid of execution, apply in the same manner as if the employer were a judgment debtor; and such provisions may be resorted to either before or after the application is made (Rule 58).

As to the investment of sums ordered to be paid into the Post Office Savings Bank, see Rule 59, and Sched. I. (7) to (10).

An appeal will not lie to the Court of Appeal against the refusal of the County Court Judge to direct insurers to pay insurance moneys into the Post Office Savings Bank under this section (*Leech* v. *Life and Health Ass. Assn.*, [1901] 1 K. B. 707). The Court did not express any opinion as to whether such an appeal would lie to a Divisional Court.

6.—*Recovery of damages from stranger.*—Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may, at his option, proceed, either at law against that person to recover damages, or against his employer for compensation under this Act, but not against both, and if compensation be paid under this Act, the employer shall be entitled to be indemnified by the said other person.

Election of remedies.—When the injury is one for which compensation is payable under the Act, and for which some person other than the employer is liable to pay damages to the workman, the workman is required by this section to elect whether he will proceed against the employer for compensation under the Act or against the third person for damages. He is precluded from doing both. If, therefore, the workman receives compensation under the Act from his employer, he cannot afterwards sue the third person for damages. So, if he recovers damages against the third person, he cannot afterwards claim compensation from his employer.

But suppose the workman takes proceedings against the employer for compensation under the Act, and fails, because, *e.g.*, the employer is found not to be an undertaker, does this preclude him from afterwards suing a third person for damages? Or, conversely, if he sues the third person, and fails, on account of contributory negligence, is he precluded from afterwards

claiming compensation from the employer under this Act? It may be argued in the former case, that it is not an "injury for which compensation is payable under this Act," and in the latter case, that it is not an injury which "was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof," so that the section does not apply. It is true the Court of Appeal has held that, under sub-sect. 2 (b) of sect. 1, an unsuccessful action for damages is a bar to subsequent proceedings for compensation, except as provided by sect. 1 (4) (see p. 23, *ante*). But the cases are not quite analogous; because, under sect. 1 (2) (b), each of the alternative remedies is against the same person—the employer, and the sub-section has to be read with sub-sect. 4, which provides for a deduction from the compensation of the costs of the unsuccessful action; whereas under this section the alternative remedies are against different persons, and no question of costs arises.

A notice of accident given to the employer under sect. 2 is not a proceeding against the employer within the meaning of this section, and does not preclude the workman from suing a third person whose negligence caused the injury (*Perry* v. *Clements*, 1901, 17 T. L. R. 525).

Right of indemnity.—Where the employer pays compensation under the Act, he is entitled to be indemnified by any other person who would have been liable to pay damages to the workman in respect of the injury. It is, of course, open to the person against whom the claim for indemnity is made to set up any defence against the employer which would have been available in an action by the workman—*e.g.*, contributory negligence on the part of the workman, or inevitable accident.

Provisions are made by Rules 19—22 (W. C. R.) for bringing in as a third party to an arbitration under the Act any person against whom the respondent claims indemnity. But, except by consent, no award can be made against the third party, nor can any question as to his liability to indemnify the respondent be decided, in the third-party procedure. He can only be precluded from disputing the validity of an award against the respondent

as to matters which the Judge has jurisdiction to decide in the arbitration between the applicant and respondent (Rule 22, *ante*, p. 58).

7.—*Application of Act and Definitions.*—(1) This Act shall apply only to employment by the undertakers as herein-after defined, on or in or about a railway, factory, mine, quarry, or engineering work, and to employment by the undertakers as herein-after defined on in or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water, or other mechanical power, is being used for the purpose of the construction, repair, or demolition thereof.

Employment in agriculture.—See Act of 1900, *post*, p. 158.

"Employment by the undertakers."—As to who are "the undertakers" within the meaning of the Act, see *post*, pp. 101—107.

The only persons liable to pay compensation under the Act are "undertakers," and the employment must be by the undertakers of the particular railway, factory or other specified work on, in, or about which the injury occurs. In *Francis* v. *Turner*, [1900] 1 Q. B. 478, the respondents, who were the occupiers (and therefore the undertakers) of a factory, bought an engine from the occupiers of another factory about half a mile away, and sent workmen to remove the engine from such other factory and bring it to their own. While in the other factory, engaged in moving the engine, one of the respondents' workmen was killed by an accident, and compensation was claimed by his dependants. The Court of Appeal, confirming the decision of the County Court Judge, held that the words "employment by the undertakers . . . on or in or about a . . . factory," mean employment by the undertakers on or in or about their own factory, *i.e.*, the factory which they occupy for the purpose of carrying

on their business, and that the respondents were not liable to pay compensation.

So, where a workman in the employ of the occupier of an iron foundry was sent to execute repairs in some soap-works, and was killed in the execution of the work, the Court of Session (Lord Trayner, *diss.*) held that the ironfounder was not liable to pay compensation to the widow (*Malcolm* v. *M'Millan*, 1900, 2 Fraser, 525). See, however, sect. 142 of the Factory Act, 1901, referred to *post*, p. 102.

For definitions of railway, factory, mine, &c., see *post*, sect. 7 (2) and notes.

"On or in or about."—These words have reference to locality, and restrict the liability of the employer to cases where the accident happens on, or in, or in close proximity to the railway, factory, mine, quarry, engineering work, or building in respect of which the employer is the undertaker. On the other hand, if the workman is injured while employed in the locality of one of the specified works, or in close proximity thereto, it is immaterial what is the nature of his own particular employment. Many cases illustrating the meaning of the word "about" have been decided under the Act.

In *Powell* v. *Brown*, [1899] 1 Q. B. 157, the deceased workman was stowing timber on a cart standing in the street outside his employer's factory, when he fell from the cart to the street and sustained the injuries of which he died. The loading and stowing of timber was part of the business carried on at the factory, and at the time of the accident the cart was in the place where it was usually loaded, near to the entrance to the factory. The Court of Appeal, confirming the decision of the County Court Judge, held that the accident happened while the deceased was employed "about" the factory, and that the dependants were entitled to compensation. In delivering judgment, Lord Justice A. L. Smith expressed the opinion that the word "about" means that the employment may be in close propinquity to a factory, and that the question whether it is so or not in any particular case is one of fact (see also *Devine* v. *Caledonian Rail. Co.*, 1899, 1 Fraser, 1105, C. of Sess.).

In *Lowth* v. *Ibbotson*, [1899] 1 Q. B. 1003, the Court of Appeal confirmed with approval the decision of the County Court Judge that a carter who was injured by accident when he was about a mile and a half from his employer's factory was not employed on, in, or about a factory at the time of the accident (see also *Bell* v. *Whitton*, 1899, 1 Fraser, 942, C. of Sess.).

In *Chambers* v. *Whitehaven Harbour Commrs.*, [1899] 2 Q. B. 132, the workman in respect of whose death compensation was claimed was employed in dredging operations in Whitehaven harbour. A steam dredger was used, and part of the work of the deceased was on the dredger, but it was also his duty, in turn with others, to go out to sea with the loaded hoppers for the purpose of emptying them into deep water. While engaged in this duty, and when more than a mile out at sea, the deceased was knocked overboard by accident and drowned, and compensation was claimed on the ground that the accident happened while he was employed on, in or about an engineering work. The Court of Appeal, confirming the decision of the County Court Judge, held that the definition in the Act of "engineering work" has reference to locality as well as to the nature of the work, and therefore, even assuming that the dredging operations in the harbour were an engineering work, the deceased was not employed "on, in or about an engineering work" within the meaning of the Act, and the respondents were not liable to pay compensation (compare *Middlemiss* v. *Berwickshire County Council*, 1900, 2 Fraser, 392, cited *post*, p. 99).

In *Fenn* v. *Miller*, [1900] 1 Q. B. 788, the applicant was a labourer in the employ of a builder, who was erecting houses on a building estate. A short distance from the houses was a barn in which there was a steam-engine used for working a mortar-mill; and it was the duty of the applicant to take a water-cart to a brook some distance along the main road, and bring it back filled with water either to the buildings or the barn. It was while returning from the brook after filling the cart with water that the injuries were sustained, the accident happening between 110 and 160 yards from the barn. The County Court Judge held that the accident happened "about" the steam-engine, which

was a factory within the meaning of the Act, and awarded compensation. On appeal, the Court of Appeal set aside the award on the ground that, though the County Court Judge was right in holding that the steam-engine was a factory, there was no evidence to justify his finding that the applicant was employed "about" a factory at the time of the accident. "If at the time of the accident the workman is only employed in driving or leading a cart carrying materials necessary for the business carried on at the factory to or from the building, and is not himself in close proximity to the factory or building, he is not within the purview of the Act" (per Romer, L.J., at p. 794). In this case, Lord Justice A. L. Smith, though he did not feel justified in dissenting from the opinion of the majority of the Court that the appeal should be allowed, doubted whether the question was not on the evidence one of fact for the arbitrator. See also *Kent* v. *Porter*, 1901, 38 Sc. L. R. 482; and *Barclay* v. *M'Kinnon*, 1901, 3 Fraser, 436, in both of which cases the Court of Session reversed the finding of the Sheriff that the employment was "about" a factory.

In *Turnbull* v. *Lambton Collieries Co.*, 1900, 82 L. T. 589, the respondents, who owned a number of collieries, also owned a private railway about twelve miles in length connecting the collieries with the North Eastern Railway, and the workman, in respect of whose death compensation was claimed, was killed on this private railway by an accident which took place about three-quarters of a mile from the pit's mouth. The Court of Appeal held that there was no evidence to justify the finding that the deceased was at the time of the accident employed on, in or about a mine (see also *Davies* v. *Rhymney Iron Co.*, 1900, 16 T. L. R. 329).

So, where a trading company's premises were connected by a siding with a railway, the siding being the property of the trading company and used solely for its own traffic, it was held that a servant of the railway company, who was injured on the siding at a spot which was three-quarters of a mile from the junction with the line of railway, was not employed on, in or about a railway at the time of the injury (*Brodie* v. *North British Rail. Co.*, 1900, 3 Fraser, 75, C. of Sess.).

In *Monaghan* v. *United Collieries*, 1900, 3 Fraser, 149, the respondents, who were the owners of a coal mine and of a siding about eighty yards in length connecting the mine with a railway, entered into a contract with the owners of a sand-pit situated on the line of railway, to carry sand from the pit in railway waggons to the colliery siding for removal thence by the railway company. A workman employed by the colliery company, while engaged in carrying out this contract, was killed on the railway line at or near the extremity of the siding, and compensation was claimed in respect of his death. The siding served only the one mine; and the definition of "mine" for the purposes of the Act includes sidings adjacent to and belonging to the mine (*post*, p. 97). The Court of Session held—(1) that the employment of the deceased was locally "about" a mine at the time of the accident; (2) that the applicant was entitled to compensation, although the work on which the deceased was engaged was not part of the proper business of the respondent company.

In *Cosgrove* v. *Anglo-American Oil Co.*, 1900, 34 Ir. L. T. R. 56, the respondents were the owners of premises consisting of about fifteen acres, on which they manufactured and stored barrels for the purpose of their trade as oil merchants. The barrels were manufactured in a building which was a factory, and were then removed to another part of the premises some distance away, and piled up. The applicant was injured while removing a barrel from the pile to another building on the premises, which was also some distance away from the factory. It was held by the Irish Court of Appeal, confirming the decision of the Recorder, that the applicant was not employed "about" a factory at the time of the injury. This decision does not seem consistent with the view expressed by Collins, L.J., in *Fenn* v. *Miller*, [1900] 1 Q. B. 788 (cited *ante*, p. 65), as follows:—"What sort of case is it that is covered by the word 'about'? One case that would obviously fall within the meaning of the word is where the business of a factory involves the use of some land beyond the actual physical limits of the buildings; employment on that land, which may be regarded as a quasi-curtilage of the factory, would be employment 'about' the factory" (at p. 793).

In *Milner* v. *G. N. Rail. Co.*, [1900] 1 Q. B. 795 (cited *post*, p. 76), the Court of Appeal, reversing the County Court Judge, held that a barmaid, employed in a refreshment room at a railway station, was not employed on, in or about a railway, though the refreshment room was under the direct management of the railway company, and the only entrance to it for the public was from the station platform.

See also the cases cited *post*, pp. 91–94, 96, 97, as to the meaning of "on, in or about" a dock, wharf, quay, machinery, or plant.

"Building which exceeds 30 feet in height," &c.—The Act applies (1) to buildings exceeding thirty feet in height, which are either being constructed or repaired by means of a scaffolding, or being demolished ; and (2) to buildings, whatever may be the height, and whether scaffolding is used or not, on which machinery driven by steam, water, or other mechanical power, is being used for the purpose of the construction, repair, or demolition thereof.

That the height of the building is immaterial where machinery driven by mechanical power is being used for the purpose of the construction, repair, or demolition thereof, was decided by the Court of Appeal in *Mellor* v. *Tomkinson*, [1899] 1 Q. B. 374 ; and this construction of the section was approved and followed by the Court of Session in *Murnin* v. *Calderwood*, 1899, 1 Fraser, 862.

In cases where mechanical power is not used for the purpose of the construction, repair, or demolition, the building, to be within the scope of the Act, must exceed thirty feet in height at the time when the accident happens. In *Billings* v. *Holloway*, [1899] 1 Q. B. 70, the respondent had contracted for the demolition of a building, and for the erection of a new building to exceed thirty feet in height on the site of the old ; and it was held by the Court of Appeal that a workman who was injured while the new building was in course of erection, and before it had reached the height of thirty feet, was not entitled to compensation.

The question how the building is to be measured for the purpose of ascertaining the height is still an open one. It has

arisen in one or two cases under the Act, but no general rule on the subject has been laid down.

In *Hoddinott* v. *Newton*, [1899] 1 Q. B. 1018, C. A., and [1901] A. C. 49, H. L., the building measured twenty-eight feet from the ground to the parapet, and thirty-six feet from the ground to the ridge of the roof. The County Court Judge held that the height of the roof must be included in the measurement, and that the building exceeded thirty feet in height. On appeal, it was argued that the method of measurement prescribed by the London Building Act, 1894, in order to ascertain the height of a building for the purposes of that Act, ought to be applied, and the building be measured from the ground level to the top of the parapet. The Court of Appeal refused to adopt that method for the purposes of this Act, and while not expressing any opinion as to whether the height of the building below the ground level ought to be taken into consideration, held that the County Court Judge was right in including the height of the roof in the measurement. In the House of Lords, the question whether the building exceeded thirty feet in height was treated as being mainly one of fact, but Lord Lindley (at p. 77) expressed the opinion that it was obviously correct to reckon the height of the roof and add it to the height of the walls.

In *Halstead* v. *Thomson*, 1901, 38 Sc. L. R. 473, the Court of Session, confirming the decision of the Sheriff, held that the basement as well as a cupola on the roof of a building were properly included in the measurement in order to ascertain the height of the building. The building was a wash-house, and the basement, which was formed with brick walls and a concrete floor, consisted of culverts containing steam and water pipes. The cupola on the roof was eight feet high. The building, without reckoning the foundations, but including the height of the culverts and cupola, was just over thirty feet high, and it was held that it exceeded thirty feet in height within the meaning of the Act. The Court did not decide whether the foundations could be properly included in the measurement.

Internal communication between two adjoining buildings, one of which is less and the other more than thirty feet in

height, does not make the smaller building part of the larger so as to bring it within the scope of the Act, even if the same business is carried on in both buildings. In *Rixsom* v. *Pritchard*, [1900] 1 Q. B. 800, the landlord of a public-house, which was more than thirty feet high, acquired an adjoining shop which was less than that height, and having established internal communication between them, used the shop as an extra bar or beerhouse. He subsequently decided to have this beerhouse demolished, and rebuilt to the height of the public-house, and the applicant was injured while employed in its demolition. The County Court Judge found that, as both buildings were used for the common purpose of the business of the public-house, and communicated internally, the beerhouse formed part of the public-house, and accordingly awarded compensation. On appeal, the Court of Appeal held that there was no evidence to justify the finding that the beerhouse was part of the public-house, and set aside the award.

"Being constructed or repaired by means of a scaffolding."—There has been a considerable conflict of judicial opinion as to the meaning of these words.

In *Wood* v. *Walsh*, [1899] 1 Q. B. 1009, the workman in respect of whose death compensation was claimed was standing on a ladder painting the outside of a house, when a rung of the ladder broke, in consequence of which he fell and sustained the injuries of which he died. The ladder on which the deceased was standing was simply resting against the wall; but there were other ladders and also some planks used on the work, and one plank on which other men (but not the deceased) had been working was resting, one end on a window-sill and the other end on the rung of a ladder. The arbitrator held that ladders were not scaffolding, nor was the arrangement with the plank, but stated a case for the opinion of the County Court Judge, who reversed his decision and awarded compensation. The Court of Appeal held—(1) that painting the outside of a house is not construction or repair; (2) that a ladder *per se* is not scaffolding, and that the question whether an arrangement of a plank and ladder is scaffolding or not is a question of fact.

The arbitrator's decision was accordingly restored (see also *M'Donald* v. *Hobbs*, 1899, 2 Fraser, 3, C. of Sess.).

In *Maude* v. *Brook*, [1900] 1 Q. B. 575, compensation was claimed in respect of the death of a plasterer, who died from injuries received through falling down the well of a staircase while engaged in plastering work inside a newly-erected house. At the time of the accident, the house was roofed in, and the external scaffolding had been removed, but in order to reach the ceilings and upper parts of the walls to do the plastering, some of the workmen, though not the deceased, were using boards laid across the top of movable trestles about four feet high. The County Court Judge awarded compensation, holding that the boards and trestles were scaffolding, and that the building was being constructed by means of such scaffolding. On appeal, Smith, L.J., and Rigby, L.J. (Collins, L.J., dissenting) held that there was evidence to justify the finding, and dismissed the appeal. "I cannot say that boards and trestles, even inside a room, may not be a scaffolding" (per Lord Lindley, in *Hoddinott* v. *Newton*, [1901] A. C., at p. 78).

In *Ferguson* v. *Green*, [1901] 1 K. B. 25, a platform constructed by means of boards and trestles, on which the applicant was standing at the time of the accident, was held by the arbitrator appointed by the County Court Judge not to be a scaffolding. The County Court Judge reversed this decision, but on appeal to the Court of Appeal, it was held that the award of the arbitrator must stand, Smith, M.R., considering that the question whether the arrangement was a scaffolding or not was purely one of fact, Collins, L.J., and Stirling, L.J., that it was a mixed question of fact and law.

In *Hoddinott* v. *Newton*, [1899] 1 Q. B. 1018, C. A., [1901] A. C. 49, H. L., the facts were as follows:—A building which had been erected for the London General Omnibus Company was taken over by the company and used as stables. It was not contemplated at the time when the building was taken over that anything further in the way of construction would be required, but when the building had been in use for some time, it was decided to have some alterations made in order to strengthen it and prevent vibration. The respondents were accordingly

engaged by the company to put in heavy iron stays between the girders and pillars supporting the building, and the workman in respect of whose death compensation was claimed, who was employed by the respondents, was helping another workman to lift one of these iron stays when he slipped and met with the accident causing his death. At the time of the accident, the deceased was standing on a platform erected solely for the purposes of the work. The platform was formed by boards resting on ledgers lashed to the iron columns, and in order to make the structure more firm, trestles were placed under the middle of the scaffold boards to support them. No poles were used in the construction of the platform ; and it was removed every evening to enable the horses to occupy their stalls for the night.

The majority of the Court of Appeal did not dissent from the finding of the County Court Judge that the platform on which the deceased was standing was a scaffolding, but the Court held that the building was not being constructed or repaired at the time of the accident.

On appeal to the House of Lords, the decision of the Court of Appeal was reversed, and it was held—(1) that the words "being constructed" do not refer only to the original construction of a building, but apply also to alterations of a structural nature made at a subsequent time ; (2) that the words "being constructed or repaired" do not confine the employment to the construction or repair of a building as a whole, but apply also to partial construction or repair; (3) that the Act does not require a scaffold or scaffolding which is capable of being used for the construction or repair of a building as a whole ; (4) that the word "scaffolding" applies to internal as well as external scaffolding, and includes an internal staging arranged with planks and trestles and without poles ; and (5) that the question whether a staging is or is not scaffolding is not a mere question of fact, but a mixed question of fact and law, on which the Court of Appeal is bound to adjudicate on the facts submitted to it.

Lord Macnaghten, in delivering judgment, said (at p. 54) : "It seems to me that whenever new material is put into a building so that it becomes an integral part of the structure,

you have something in the nature of construction; and that a building which is being so treated is being constructed within the meaning of the Act. You are putting together the old materials and the new. Now, if this be construction, I do not think it can matter in the least whether the work is taken in hand immediately after the erection of the building, or not commenced until months or even years later. Nor do I think it of importance to inquire why the work has been undertaken. . . . Construction, repair, demolition—these three operations cover, I think, every varying phase in the life of a building from its beginning to its end."

In *Dredge* v. *Conway*, [1901] 2 K. B. 42, decided since the above case, the deceased workman was standing on a structure which the County Court Judge held was a scaffolding, in order to whitewash the ceiling of the staircase in a house exceeding thirty feet in height, when he fell and was killed. Besides cleaning and painting, work of a substantial character, including some structural repairs, for which no scaffolding was required, was being done under the same contract. The Court of Appeal held that the dependants were entitled to compensation. Smith, M.R., in delivering judgment, treated the decision in *Wood* v. *Walsh* (*ante*) that painting was not construction or repair as being overruled by *Hoddinott* v. *Newton*: "The conclusion to be arrived at," from the judgments in the House of Lords in that case, "is that painting, as one of the operations to which a building is exposed, comes under the head of repair, and, if painting does, then equally whitewashing" (at p. 44). Romer, L.J., however, wished "to guard himself from being supposed to decide that every unimportant piece of work that is done on a building is necessarily within the statute because some small trestle or insignificant support is used in doing the work."

The Court of Appeal in Ireland has held, since the decision of the House of Lords in *Hoddinott* v. *Newton*, that "repair" may include painting and whitewashing the interior of a building, when painting and whitewashing is a portion of the work necessary to finish the building; and that "scaffolding" includes a staging arranged by resting one end of a plank on a

rung of a ladder leaning against the wall of a room and the other end on one of the roof principals in the centre of the room, the plank being high enough to enable a workman standing on it to reach the ceiling (*Reddy* v. *Broderick*, [1901] 2 Ir. R. 328).

A building is "being constructed" within the meaning of the Act until all the scaffolding used for the purpose of the construction has been taken down. This was decided by the Court of Appeal in *Frid* v. *Fenton*, 1900, 82 L. T. 193. The respondents were engaged to build a chimney-shaft at cement works. The works stood near the edge of a cliff twenty feet high, and it was necessary to raise the building materials from the lower level to the top of the cliff, and for this purpose scaffolding was erected on the lower level. The accident happened while the workman was employed in removing this scaffolding after the erection of the shaft had been completed, and the inside scaffolding by means of which it was erected had been removed, the chimney at the time of the accident being in actual use. The County Court Judge thought that the shaft was "being constructed" within the meaning of the Act, and awarded compensation; and the Court of Appeal confirmed the award.

In a Scotch case, where planks and trestles were erected and used from time to time as a scaffolding for the construction of a building, it was held by the Court of Session, confirming the decision of the Sheriff, that the building was "being constructed by means of a scaffolding," although at the time of the accident the scaffolding was not erected nor in use (*Halstead* v. *Thomson*, 1901, 38 Sc. L. R. 473).

It should be noted that where a building exceeding thirty feet in height is being constructed or repaired by means of a scaffolding, all the workmen employed on, in or about the building are within the purview of the Act. It is not necessary that the injured workman should be employed on or about the scaffolding.

(2) In this Act—

"Railway" means the railway of any railway company to which the Regulation of Railways

Act, 1873, applies, and includes a light railway made under the Light Railways Act, 1896; and "railway" and "railway company" have the same meaning as in the said Acts of 1873 and 1896.

Railway.—By sect. 3 of the Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), the term "railway company" includes "any person being the owner or lessee of or working any railway in the United Kingdom constructed or carried on under the powers of any Act of Parliament." And by the same section the term "railway" is defined as including "every station, siding, wharf, or dock of or belonging to such railway and used for the purposes of public traffic."

The Light Railways Act, 1896 (59 & 60 Vict. c. 48), s. 28, defines the expression "light railway company" as including "any person or body of persons, whether incorporated or not, who are authorised to construct, or are owners or lessees of, any light railway authorised by the Act, or who are working the same under any working agreement." The Act contains no express definition of the term "light railway."

The Regulation of Railways Act, 1873, has no application to private railways which are not constructed or carried on under statutory powers, and such a railway is therefore not within the scope of this Act. In *Turnbull* v. *Lambton Collieries Co.*, 1900, 82 L. T. 589, the respondents owned a private railway about twelve miles long, connecting their collieries with the North Eastern Railway, and an engine-driver in their employ was killed while driving an engine on this private railway. The railway was under the sole control of the respondents, and was used by them solely for the conveyance of their own coal. It was held that the deceased was not employed on, in or about a railway within the meaning of the Act (see also *Brodie* v. *North British Rail. Co.*, 1900, 3 Fraser, 75, C. of Sess.). Nor does the term "railway" as used in the Act include a railway which is in the course of construction and has never been opened for public traffic (see judgment of Lord M'Laren in

Burns v. *North British Rail. Co.*, 1900, 2 Fraser, 629, C. of Sess.).

In *Milner* v. *G. N. Rail. Co.*, [1900] 1 Q. B. 795, it was held by the Court of Appeal that a public refreshment room at one of the respondent company's stations was not included in the term "railway" as defined by the Regulation of Railways Act, 1873, although such refreshment room was managed directly by the company, and the only entrance to it for the public was from the station platform. The grounds of the decision were that a railway refreshment room could not properly be said to be used for the purposes of public traffic, and that the definition of the term "railway" as including "every station, &c.," does not mean that every part of a station is to be included, but only such part of it as is used for the purposes of public traffic.

This case was distinguished by the Court of Session in *Caledonian Rail. Co.* v. *Breslin*, 1900, 2 Fraser, 1158. A smith in the employ of the respondent company was injured while shoeing horses belonging to the company in a smithy which was situated in a yard within the area occupied by the company as a general station. The horses were used for the purpose of hauling trucks and the collection and delivery of goods. The yard in which the smithy was situated was used entirely for the business of the company, but it was separated from the station proper by a wall and fence, and the public had no access to it. It was held that the smithy, being used for the purpose of facilitating public traffic, was "used for the purposes of public traffic" within the meaning of the Regulation of Railways Act, and therefore formed part of the railway.

"Factory" has the same meaning as in the Factory and Workshop Acts, 1878 to 1891, and also includes any dock, wharf, quay, warehouse, machinery, or plant, to which any provision of the Factory Acts is applied by the Factory and Workshop Act, 1895, and every laundry worked by steam, water, or other mechanical power.

"**Factory.**"—The Factory and Workshop Act, 1878 (41 & 42 Vict. c. 16), and so far as they are material to the definition of "factory," the Factory and Workshop Acts, 1891 (54 & 55 Vict. c. 75) and 1895 (58 & 59 Vict. c. 37), are repealed as from the 1st day of January, 1902, and re-enacted with modifications by the Factory and Workshop Act, 1901 (1 Edw. VII. c. 22).

The Interpretation Act, 1889 (52 & 53 Vict. c. 63) by sect. 38 (1) provides that where any Act passed after the commencement of that Act repeals and re-enacts, with or without modifications, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless a contrary intention appears, be construed as references to the provisions so re-enacted.

After the 1st of January, 1902, therefore, "factory" in this Act will have the same meaning as in the Factory and Workshop Act of 1901, and will include any dock, wharf, quay, warehouse, machinery or plant to which any provision of that Act is applied.

The meaning of "factory" in the Factory and Workshop Acts, 1878 to 1891, is exactly the same as in the Act of 1901, except that by the latter Act, the term includes electrical stations; and, if mechanical power is used, dry cleaning, carpet beating and bottle washing works.

The following premises and places are factories within the meaning of the Factory and Workshop Acts, 1878 to 1891, and the Factory and Workshop Act, 1901, and therefore within the meaning of this Act (F. and W. Act, 1878, s. 93; F. and W. Act, 1891, ss. 31, 38; F. and W. Act, 1901, s. 149 (1)):—

A. Any premises wherein or within the close or curtilage of which steam, water, or other mechanical power, is used to move or work any machinery employed in preparing, manufacturing, or finishing, or in any process incident to the manufacture of cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, cocoa-nut fibre, or other like material, either separately or mixed together, or mixed with any other material, or any fabric made thereof:

(The expression "machinery" includes any driving

strap or band; and the expression "process" includes the use of any locomotive (F. and W. Act, 1891, s. 37 (1); F. and W. Act, 1901, s. 156 (1).).

B. Any works, warehouses, furnaces, mills, foundries, or places named in Part I. of the Fourth Schedule to the F. & W. Act, 1878, and in Part I. of the Sixth Schedule to the F. & W. Act, 1901, namely:—

(1) "*Print works,*" that is to say, any premises in which any persons are employed to print figures, patterns, or designs upon any cotton, linen, woollen, worsted, or silken yarn, or upon any woven or felted fabric not being paper;

(2) "*Bleaching and dyeing works,*" that is to say, any premises in which the processes of bleaching, beetling, dyeing, calendering, finishing, hooking, lapping, and making up and packing any yarn or cloth of any material, or the dressing or finishing of lace, or any one or more of such processes, or any process incidental thereto, are or is carried on;

(Premises in which the processes of hooking, lapping, making up and packing cloth are carried on, are a factory within this clause, even if none of such processes are carried on as incidental to bleaching or dyeing: *Rogers* v. *Manchester Packing Co.*, [1898] 1 Q. B. 344.)

(3) "*Earthenware works,*" that is to say, any place in which persons work for hire in making or assisting in making, finishing, or assisting in finishing, earthenware or china of any description, except bricks and tiles not being ornamental tiles;

(4) "*Lucifer-match works,*" that is to say, any place in which persons work for hire in making lucifer matches, or in mixing the chemical materials for making them, or in any process incidental to making lucifer matches, except the cutting of the wood;

(5) "*Percussion-cap works,*" that is to say, any place in which persons work for hire in making percussion caps, or in mixing or storing the chemical materials

for making them, or in any process incidental to making percussion caps;

(6) "*Cartridge works*," that is to say, any place in which persons work for hire in making cartridges, or in any process incidental to making cartridges, except the manufacture of the paper or other material that is used in making the cases of the cartridges;

(7) "*Paper-staining works*," that is to say, any place in which persons work for hire in printing a pattern in colours upon sheets of paper, either by blocks applied by hand, or by rollers worked by steam, water, or other mechanical power;

(8) "*Fustian-cutting works*," that is to say, any place in which persons work for hire in fustian cutting;

(9.) "*Blast furnaces*," that is to say, any blast furnace or other furnace or premises in or on which the process of smelting or otherwise obtaining any metal from the ores is carried on;

(10) "*Copper mills*";

(11) "*Iron mills*," that is to say, any mill, forge, or other premises, in or on which any process is carried on for converting iron into malleable iron, steel, or tin plate, or for otherwise making or converting steel;

(12.) "*Foundries*," that is to say, iron foundries, copper foundries, brass foundries, and other premises or places in which the process of founding or casting any metal is carried on; except any premises or places in which such process is carried on by not more than five persons, and as subsidiary to the repair or completion of some other work;

(13) "*Metal and india-rubber works*," that is to say, any premises in which steam, water, or other mechanical power is used for moving machinery employed in the manufacture of machinery, or in the manufacture of any article of metal not being machinery, or in the manufacture of india-rubber or gutta-percha, or of articles made wholly or partially of india-rubber or gutta-percha;

(14) "*Paper mills*," that is to say, any premises in which the manufacture of paper is carried on;

(15) "*Glass works*," that is to say, any premises in which the manufacture of glass is carried on;

(16) "*Tobacco factories*," that is to say, any premises in which the manufacture of tobacco is carried on;

(17) "*Letter-press printing works*," that is to say, any premises in which the process of letter-press printing is carried on;

(18) "*Bookbinding works*", that is to say, any premises in which the process of bookbinding is carried on;

(19) "*Flax scutch mills*";

To which must be added on and after the 1*st of January,* 1902:—

(20) "*Electrical stations*," that is to say, any premises or that part of any premises in which electrical energy is generated or transformed for the purpose of supply by way of trade, or for the lighting of any street, public place, or public building, or of any hotel, or of any railway, mine, or other industrial undertaking.

C. Any premises or places named in Part II. of the Fourth Schedule to the F. & W. Act, 1878, and in Part II. of the Sixth Schedule to the F. & W. Act, 1901, wherein or within the close or curtilage or precincts of which steam, water, or other mechanical power, is used in aid of the manufacturing process carried on there, namely:—

(21) "*Hat works*," that is to say, any premises in which the manufacture of hats or any process incidental to their manufacture is carried on;

(22) "*Rope works*," that is to say, any premises being a ropery, rope-walk, or rope work, in which is carried on the laying or twisting or other process of preparing or finishing the lines, twines, cords, or ropes;

(23) "*Bakehouses*," that is to say, any places in which are baked bread, biscuits, or confectionery from the baking or selling of which a profit is derived;

(24) "*Lace warehouses*," that is to say, any premises,

room, or place not included in bleaching and dyeing works as before defined, in which persons are employed upon any manufacturing process or handicraft in relation to lace, subsequent to the making of lace upon a lace machine moved by steam, water, or other mechanical power;

(25) "*Shipbuilding yards*," that is to say, any premises in which any ships, boats, or vessels used in navigation, are made, finished, or repaired (see *post*, p. 115);

(26) "*Quarries*," that is to say, any place, not being a mine, in which persons work in getting slate, stone, coprolites or other minerals (see also *post*, p. 99);

(27) "*Pit-banks*," that is to say, any place above ground adjacent to a shaft of a mine, in which place the employment of women is not regulated by the Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), or the Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77), whether such place does or does not form part of the mine within the meaning of those Acts.

The former Act does regulate the employment of women above ground, but the latter does not. The pit-banks of metalliferous mines are therefore within this clause, and the pit-banks of coal mines are not (see also pp. 97, 98, *post*).

On and after the 1st of January, 1902, must be added:—

(28) Dry cleaning, carpet beating, and bottle washing works.

D. Any premises wherein or within the close or curtilage or precincts of which any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes, namely:—

(i.) the making of any article or of part of any article; or

(ii.) the altering, repairing, ornamenting, or finishing of any article; or

(iii.) the adapting for sale of any article,

and wherein or within the close or curtilage or

precincts of which steam, water, or other mechanical power is used in aid of the manufacturing process carried on there (Act of 1878, s. 93 (3); Act of 1901, s. 149 (1) (c)).

In *Nash* v. *Hollinshead*, [1901] 1 K. B. 700, the respondent was a farmer, who, for the purposes of threshing, chaff-cutting, and grinding meal, had a movable steam-engine on the farm. It was the duty of the applicant to attend to the engine, and he met with an accident while using it for grinding meal. The respondent did not sell any of the meal, but used the whole of it for feeding stock on the farm, and he did not carry on any other business than that of a farmer. The County Court Judge held that the farm was a factory within the definition above set out (s. 93 (3) of the Act of 1878), and awarded compensation. On appeal, it was held that the words "by way of trade or for purposes of gain" govern the whole of the definition in question, and that "gain" means direct gain. The appeal was accordingly allowed. Romer, L.J. (at p. 707), expressly reserved his opinion as to what the result might have been if the operation of grinding the meal had been carried on with a view to its sale as an article of commerce.

In *Henderson* v. *Glasgow Corporation*, 1900, 2 Fraser, 1127, where steam power was used in the works of the respondent corporation for the purpose of separating certain saleable parts of the city refuse from the unsaleable parts, and the sums realised by the sales were applied in reduction of the expenses of disposal of the refuse, but were not sufficient to discharge the whole of such expenses, the difference being charged on the rates, it was held by the Court of Session that the separation of the refuse was "the adapting for sale" of an article "by way of trade or for purposes of gain," and that the works were therefore a factory within the definition.

Premises on which bottles were washed by manual labour with the aid of mechanical power, and were then filled with beer by manual labour alone, nothing being done to the beer itself to alter its nature or character for the purpose of adapting it for sale, were held by the Court of Appeal not to be a factory within this definition (sect. 93 (3) of the Act of 1878):

Law v. *Graham*, 1901, 17 T. L. R. 474. Bottle-washing works "wherein or within the close or curtilage or precincts of which steam, water, or other mechanical power is used in aid of the manufacturing process carried on there" are, however, included in the definition of "factory," by the Factory and Workshop Act, 1901, which comes into operation on the 1st January, 1902 (*ante*, p. 81).

In *Petrie* v. *Weir*, 1900, 2 Fraser, 1041, a stone-dressing yard, consisting of a yard where the stones were dressed by manual labour, and an engine-house where tools for dressing the stones were sharpened on a grindstone driven by a gas engine, there being no other mechanical power employed on the premises, was held by the Court of Session to be a factory within sect. 93 (3) of the Act of 1878.

Where a place situate within the close, curtilage, or precincts forming a factory is solely used for some purpose other than the manufacturing process or handicraft carried on in the factory, such place is not deemed to form part of the factory for the purposes of the Factory Acts (Act of 1878, s. 93; Act of 1901, s. 149 (4)). Nor is a room solely used for the purpose of sleeping therein (Act of 1878, s. 93, as amended by Act of 1891, s. 31; Act of 1901, s. 149 (3)).

Places or premises are not excluded from the definition of "factory" by reason only that they are in the open air (Act of 1878, s. 93; Act of 1901, s. 149 (5)).

The Factory Acts apply to factories belonging to the Crown (Act of 1878, s. 93; Act of 1901, s. 150 (1)); and a factory belonging to or in the occupation of the Crown is not excluded from the operation of the Act of 1901 by reason only that it is not carried on by way of trade or for purposes of gain (s. 150 (2)).

The words "other mechanical power" include such motive powers as gas, electricity, or the like, but do not extend to machinery worked solely by manual labour (*Wrigley* v. *Bagley*, [1901] 1 K. B. 780; *Brown* v. *Herriot*, 1899, 33 Ir. L. T. R. 123). The expression "process" includes the use of any locomotive (Act of 1891, s. 37 (1); Act of 1901, s. 156 (1)).

Docks, wharves, quays, warehouses, machinery and plant.—The word "factory" in this Act "includes any dock, wharf, quay, warehouse, machinery, or plant, to which any provision of the Factory Acts is applied by the Factory and Workshop Act, 1895."

The Factory and Workshop Act, 1895, by sect. 23 (1), provides that the following provisions, namely :—

(i.) Sect. 82 of the principal Act (*i.e.*, the Factory and Workshop Act, 1878) ;

(ii.) The provisions of the Factory Acts with respect to accidents ;

(iii.) Sect. 68 of the principal Act with respect to the powers of inspectors ;

(iv.) Sects. 8 to 12 of the Act of 1891 with respect to special rules for dangerous employments ; and

(v.) The provisions of the Act of 1895 with respect to the power to make orders as to dangerous machines,

"shall have effect as if—

"(a) every dock, wharf, quay, and warehouse, and, so far as relates to the process of loading or unloading therefrom or thereto, all machinery and plant used in that process ; and

"(b) any premises on which machinery worked by steam, water, or other mechanical power, is temporarily used for the purpose of the construction of a building or any structural work in connection with a building,—

"were included in the word factory, and the purpose for which the machinery is used were a manufacturing process, and as if the person who by himself, his agents, or workmen temporarily uses any such machinery for the before-mentioned purpose were the occupier of the said premises ; and for the purpose of the enforcement of those sections, the person having the actual use or occupation of a dock, wharf, quay, or warehouse, or of any premises within the same or forming part thereof, and the person so using any such machinery, shall be deemed to be the occupier of a factory."

The provisions (i.) to (v.) above referred to relate to :—

(i.) The imposition of fines for neglecting to fence machinery,

&c., where death or bodily injury results from such neglect (Act of 1878, s. 82);

(ii.) The notices to be given and proceedings to be taken where an accident happens in a factory or workshop (Act of 1891, s. 22 (3); Act of 1895, ss. 18—21);

(iii.) The powers of inspector with respect to factories and workshops, and places which he has reasonable cause to believe to be factories or workshops (Act of 1878, s. 68);

(iv.) The making of special regulations for dangerous trades (Act of 1891, ss. 8—12);

(v.) The powers of a court of summary jurisdiction to prohibit the use of dangerous machines (Act of 1895, s. 4).

The Factory and Workshop Act, 1901, repeals the Act of 1895, with the exception of certain sections which are not material to the subject in hand, as from the 1st of January, 1902, and re-enacts the provisions of sect. 23, with important modifications.

The Act of 1901, by sect. 104, provides as follows:—

"(1) The provisions of this Act with respect to—

"(i.) Power to make orders as to dangerous machines (sect. 17);

"(ii.) Accidents;

"(iii.) Regulations for dangerous trades;

"(iv.) Powers of inspectors (sect. 119); and

"(v.) Fines in case of death or injury (sect. 136);

"shall have effect as if every dock, wharf, quay, and warehouse, and all machinery or plant used in the process of loading or unloading or coaling any ship in any dock, harbour, or canal were included in the word 'factory,' and the purpose for which the machinery or plant is used were a manufacturing process; and as if the person who by himself, his agents, or workmen, uses any such machinery or plant for the before-mentioned purpose were the occupier of the premises; and for the purpose of the enforcement of those provisions the person having the actual use or occupation of a dock, wharf, quay, or warehouse, or of any premises within the same or forming part thereof, and the person so using any such machinery or plant shall be deemed to be the occupier of a factory."

"(2) For the purposes of this section the expression 'plant' includes any gangway or ladder used by any person employed to load or unload or coal a ship, and the expressions 'ship' and 'harbour' have the same meaning as in the Merchant Shipping Act, 1894." ("Ship" is defined by the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 742, as including "every description of vessel used in navigation not propelled by oars"; and "harbour" as including "harbours properly so called, whether natural or artificial, estuaries, navigable rivers, piers, jetties, or other works in or at which ships can obtain shelter, or ship and unship goods or passengers.")

By sect. 105 (1) of the Act of 1901 it is provided that the provisions (i.) to (v.) above-mentioned—

"Shall have effect as if any premises on which machinery worked by steam, water, or other mechanical power is temporarily used for the purpose of the construction of a building or any structural work in connection with a building were included in the word 'factory,' and the purpose for which the machinery is used were a manufacturing process, and as if the person who, by himself, his agents, or workmen, temporarily uses any such machinery for the before-mentioned purpose were the occupier of the said premises; and for the purpose of the enforcement of those provisions the person so using any such machinery shall be deemed to be the occupier of a factory."

Docks, wharves, quays, and warehouses.—"Factory" is defined by this Act as including (*inter alia*) "any dock, wharf, quay, warehouse, machinery, or plant, to which any provision of the Factory Acts is applied by the Factory and Workshop Act, 1895."

In *Hall* v. *Snowden*, [1899] 2 Q. B. 136, the question whether the effect of this definition was to make every dock, wharf, quay, or warehouse a factory for the purposes of the Act, having regard to the provisions of the 23rd section of the Factory and Workshop Act, 1895, arose, and was decided by the Court of Appeal in the negative. The facts were as follows:—

The respondents were the occupiers of a wharf which abutted on the Regent's Canal, and which they used for the purpose of

loading mud and road sweepings from carts into lighters lying in the canal. There was no machinery on the wharf, which consisted of a yard, with balks of timber at the edge to prevent the carts from falling into the canal. At the time of the accident, a firm of contractors were engaged in laying water pipes between the canal and an electric lighting station, for which purpose they had to pass through the wharf; and the respondents had contracted with them to carry away the soil thrown up in laying the pipes. The workman, in respect of whose death compensation was claimed, was a carter in the employ of the respondents, and met with the injuries which resulted in his death while leading a cart out of the entrance to the wharf into the street after having loaded it with soil in the wharf. The County Court Judge held that the wharf was not a factory within the meaning of the Act, and refused to award compensation.

On appeal, it was argued for the appellant that some of the provisions of the Factory Acts, namely, those relating to accidents and the powers of inspectors, were applied by the Act of 1895 to every wharf, whether there was machinery on it or not; and that the test was not whether any provision of the Acts had in fact been applied, but whether any such provision was capable of being applied to the wharf in question. The Court of Appeal rejected this argument, and unanimously confirmed the decision of the County Court Judge. Smith, L.J., in delivering his judgment, in which Collins and Vaughan-Williams LL.JJ., entirely concurred, said (at p. 141): "I think that in order to get a wharf, which *per se* is not a factory, within the term 'factory,' it must be shown that some of the provisions of the Factory Acts are applicable; for instance, if any order made under the Factory Acts were applicable to the *locus in quo*, that is, to the wharf, it would be brought within the term 'factory' as used in this Act; if, therefore, any orders made under the Factory Acts on such matters as inspection, notice of accidents, &c., were applicable to a particular wharf, it might be said to be brought within the Factory Acts, and within the Workmen's Compensation Act. Two such provisions are said to be applicable to this wharf. First, it is said that the

provisions of sect. 18 of the Factory and Workshop Act, 1895, as to notices of accident, apply; but . . . under that section it is only when the accident occurs 'in' a factory or workshop that notice has to be given; the section, therefore, cannot be made applicable in the present case, because no accident occurred on the wharf. . . . Then it is said that the provisions of sect. 68 of the Factory and Workshop Act, 1878, as to the powers of inspectors, were applicable to this wharf, and that it could be inspected under that Act. But no evidence was given that any persons were employed on this wharf in such a manner as to bring it within that section. . . . I do not think that an inspector would have had any authority under it to enter on the wharf for the purpose of exercising his powers of inspection and inquiry."

This decision was commented upon and doubted by the Court of Session in *Bruce* v. *Henry*, 1900, 2 Fraser, 717, and was unanimously disapproved by the same Court in *Strain* v. *Sloan*, 1901, 38 Sc. L. R. 475. In the former case the question for the opinion of the Court was whether the provision of sect. 18 of the Act of 1895 applies prospectively so as to render a dock a factory before an accident has actually occurred in the dock; and the Lord President expressed the opinion (at p. 721) "that although the obligation to give the notice only arises when an accident happens, the more natural construction seemed to be that the statutory requirement applies to the place throughout." In *Strain* v. *Sloan*, the accident in respect of which compensation was claimed happened in the street outside a wharf, and the Sheriff, on the authority of *Hall* v. *Snowden*, refused to award compensation. The Court of Session unanimously held that the wharf was a factory within the meaning of the Workmen's Compensation Act, on the ground that certain provisions of the Factory Acts are applied to every wharf by the Act of 1895; and the case was accordingly sent back to the Sheriff to decide whether the accident happened "about" the wharf. The opinions expressed in the earlier cases of *Jackson* v. *Rodger*, 1900, 2 Fraser, 533, and *Healy* v. *Macgregor*, 1900, 2 Fraser, 634, to the effect that a dock is not *per se* a factory within the meaning of the Act, must therefore, so far as Scotland is concerned, be considered not law.

It is clear that a dock, wharf, quay or warehouse in or on which machinery is used is brought within the scope of the Act by the application of the provisions of sect. 82 of the Factory Act, 1878, and sect. 4 of the Factory Act, 1895. In *Raine* v. *Jobson*, [1901] A. C. 404, cited *post*, p. 92, the counsel for the respondents are reported to have admitted that every dock is a factory within the meaning of the Act, and the head-note in the Law Reports states that proposition as having been decided by the case. But in the Law Journal report (70 L. J. K. B. 771) it appears that the dock in question was provided with a steam crane and pumping machinery, and would therefore clearly come within the scope of the Act, so that it is doubtful whether *Hall* v. *Snowden* can be considered overruled. The question, however, is not of much importance, because, even assuming the decision in *Hall* v. *Snowden* to be still good law, the modifications made by the Factory Act, 1901, in the re-enactment of sect. 4 of the Act of 1895, appear to bring every dock, wharf, quay, and warehouse, whether machinery is employed or not, within the scope of this Act as from the 1st of January, 1902.

Sect. 17 of the Act of 1901, which is substituted for sect. 4 of the Act of 1895, and is applied to every dock, wharf, quay, and warehouse by sect. 104 of the Act of 1901, empowers a court of summary jurisdiction, on the complaint of an inspector, and on being satisfied that "*any part of the ways, works, machinery, or plant*" used in a factory or workshop is in such a condition that it cannot be used without danger to life or limb, to prohibit its use, or if capable of repair or alteration, prohibit its use until it is duly repaired or altered. Under sect. 4 of the Act of 1895, this power was only given in the case of "*a machine*" which the Court was satisfied was in such a condition that it could not be used without danger to life or limb. Under the Act of 1901, therefore, an inspector (who has such powers generally as may be necessary for carrying the Act into effect: sec. 119 (1) (9)), would be entitled to enter any dock, wharf, quay or warehouse, whether machinery is used or not, in order to inspect the condition of the ways, works, and plant.

What is a "wharf"?—The question what is the meaning of the word "wharf" as used in the Act arose in *Haddock* v. *Humphrey*, [1900] 1 Q. B. 609. The workman, who was employed by a firm of carters, was sent to fetch a log of timber from a yard in the occupation of a firm of timber merchants, and met with the accident which resulted in his death while removing the log from a pile of timber in the yard. It was contended that this yard, which formed part of the premises belonging to a dock company, and was leased by the company to the timber merchants, was a wharf. A large space stretching inland for 150 yards was provided by the dock company as a quay for unloading ships laden with timber, and at the extreme end of this space was a roadway running parallel with the water's edge. On the further side of this roadway, which the public were permitted to use when the dock premises were open, was a fence with offices and gates at intervals; and behind the fence and offices a row of yards, which were all enclosed, together with the quay space and roadway, by walls and gates belonging to the dock company. The yards were leased by the dock company to various timber merchants, and it was in one of these yards that the accident happened. The County Court Judge held that the yard was not a wharf. On appeal, it was held by Smith, L.J., and Collins, L.J. (Rigby, L.J., dissenting), that the word "wharf" must be construed in its ordinary popular sense as meaning a place "contiguous to water over which goods pass in the process of loading and unloading, and which serves as a factor in their transference from the water to the land," and that the yard in question, being set apart and cut off from the quay space by a fence and gates, and being leased to a particular firm, and chiefly intended and used for storage, was not a wharf within the meaning of the Act.

What is a "warehouse"?—None of the Factory Acts contain any definition of the term "warehouse"; nor has the question of the meaning of the term as used in those Acts and the Workmen's Compensation Act arisen in any of the reported cases.

It does not appear from the general scope of the Factory Acts

that the term is intended to be construed *ejusdem generis* with the preceding words dock, wharf, or quay; and there does not seem to be any reason why it should not be construed in its ordinary popular signification as including not only public warehouses kept by warehousemen, in which goods are stored for hire, and bonded warehouses, but also all other buildings used for the storage of goods or merchandise for the purposes of a wholesale trade, such as private warehouses kept by merchants for the storage of their own goods. Possibly the term might also be held to include buildings where goods are stored for the purposes of retail trading, though this would probably be going beyond the intention of the Legislature.

"On, in, or about" a dock, wharf, or quay. Ship in dock or alongside wharf or quay.—The question whether employment on, in, or about a ship in a dock, or a ship moored to a wharf or quay, is employment on, in, or about the dock, wharf, or quay within the meaning of the Act; and whether a workman is excluded from the benefit of the Act because he is employed on or about a ship when the accident happens, has arisen in several cases, and one case has been carried to the House of Lords.

In *Flowers* v. *Chambers* [1899], 2 Q. B. 142, the respondents were barge owners, and had contracted for the discharge of manure and refuse from cattle steamers into barges supplied by them. The applicant, a workman in their employ, was on board a steamer moored alongside a quay in the Victoria Docks, and was engaged in mooring to the steamer a barge into which manure was about to be discharged, when he fell from the upper to the lower deck of the steamer, and sustained the injuries for which he claimed compensation. The County Court Judge held that the applicant was employed on, in, or about a dock, which was a factory within the meaning of the Act, and awarded compensation. The Court of Appeal unanimously held that employment on a ship lying in a dock is not employment on, in, or about the dock within the meaning of the Act, and allowed the appeal. So, where a boy, who was assisting to screw up the iron doors of a ship in a dock after

the loading was completed, fell from the staging on which he was working, and which was fastened to the outside of the ship, and was drowned, it was held by the Court of Appeal, reversing the decision of the County Court Judge, that he was employed on a ship, and not on, in, or about a dock; and that the dependants were not entitled to compensation (*Durrie* v. *Warren*, 1899, 15 T. L. R. 365).

These cases were followed, and the principle that a workman employed on a ship lying in a dock is not employed "on, in, or about" the dock within the meaning of the Act was applied, by the Court of Session in *Low* v. *Abernethy*, 1900, 2 Fraser, 722; and *Laing* v. *Young*, 1900, 3 Fraser, 31; and by the Court of Appeal in Ireland in *Brown* v. *Herriot*, 1899, 33 Ir. L. T. R. 123.

In *Merrill* v. *Wilson*, [1901] 1 K. B. 35, the workman in respect of whose death compensation was claimed was one of a gang of labourers employed by the respondents, who were shipowners, to unload cattle from a ship. The ship was moored alongside a quay in the Alexandra Docks at Hull, and the cattle were to be unloaded into lighters lying in the dock. For the purpose of getting on board the ship in order to commence the work of discharging the cattle, the deceased workman with others was proceeding to place a gangway from the quay to the ship when he tripped against something on the quayside, and falling over, was crushed to death between the quayside and the ship. The County Court Judge refused to award compensation on the ground that the employment was on or about a ship, and was therefore not within the scope of the Act. On appeal, this decision was reversed, the Court of Appeal holding that the deceased was employed on or about the quay when the accident happened, although he also had duties to perform on the ship.

In *Raine* v. *Jobson*, 70 L. J. K. B. 771; [1901] A. C. 404, the question how far the fact of being employed on or about a ship excludes a workman from the benefit of the Act came before the House of Lords. The facts were as follows:—The respondents, who were repairers of ships, having no dock of their own, hired a dry dock for the purpose of examining and

cleaning the bottom of a steamer. One of the labourers employed by the respondents, who was at work on the vessel, was directed to go ashore for some paraffin, and was crossing the plank which connected the vessel with the side of the dock, when the plank tilted, and he fell to the bottom of the dock and sustained the injuries of which he died. The Court of Appeal, confirming the decision of the County Court Judge, held that he was not employed on, in, or about the dock, and that the widow was not entitled to compensation. The House of Lords reversed the decision. Lord Halsbury, L.C., in delivering judgment, said (at p. 773), "I quite agree that it would appear from the Act that it was not within the contemplation of the statute to deal with the relation between shipowners and sailors when engaged in their ordinary occupation of sailing upon the seas, or to bring them within the statute at all. But although I quite agree that that is the true view of what this Act of Parliament has done, it seems to me a most extraordinary consequence of that omission to suppose that thereupon everything that is done in or upon or near a ship is to be excluded from the operation of the Act of Parliament. It would be to my mind a most unreasonable and extraordinary extension of that immunity given to persons interested in seafaring adventure to suppose, because the accident happened in or upon a ship, that therefore it is to be excluded from the operation of the Act of Parliament generally. The respondents are a firm, part of whose business consists of repairing ships, and for that purpose of their business they hired a dock. I do not care for what purpose they hired it. For my own part, whether there was a ship in it or not, if they were engaged in some performance for which they required the use of a dry dock, and if in the course of that employment a workman was injured, they would to my mind, under these Acts of Parliament, be clearly within these Acts, and liable to pay compensation. The question of fact whether it happened on a ship or not appears to be an absolutely irrelevant inquiry. It is perfectly immaterial whether it was on a ship, or a landing stage, or a staging or what not." All the other noble and learned Lords concurred, Lord Macnaghten expressing the opinion that it was difficult, if

not impossible, to reconcile the decisions of the Court of Appeal in *Merrill* v. *Wilson* and *Flowers* v. *Chambers*, and stating that, of the two, he preferred the decision in *Merrill* v. *Wilson*.

Flowers v. *Chambers* and the other cases cited above must therefore be considered overruled so far as they decided that a workman was excluded from the operation of the Act because he was employed on or about a ship at the time when the accident happened.

Machinery and plant.—Machinery or plant used in the process of loading or unloading from or to any dock, wharf, quay, or warehouse, is itself constituted a factory for the purposes of the Act by the combined effect of the definition of factory in sect. 7 (2) of this Act and of sect. 23 (1) of the Factory and Workshop Act, 1895 (*ante*, p. 84).

In *Hennessey* v. *McCabe*, [1900] 1 Q. B. 491, the Court of Appeal, reversing the County Court Judge, held that loading or unloading between two vessels in a dock was not loading or unloading from or to the dock; and that machinery used in the process of loading goods from lighters lying in a dock on the outside of a ship, which was moored alongside a quay, was not a "factory" for the purposes of the Act, not being used in the process of loading from or to a dock, wharf, quay, or warehouse within the meaning of the Factory and Workshop Act, 1895, s. 23 (1).

In *Laing* v. *Young*, 1900, 3 Fraser, 31, it was held by the Court of Session, and in *Blair* v. *Dundalk, &c., Packet Co.*, 1899, 33 Ir. L. T. R. 132, by the Court of Appeal in Ireland, that machinery which was used merely for the purpose of raising goods from the hold to the deck of a vessel, the goods then being transferred to a wharf or quay by manual labour, was not machinery used in the process of unloading goods to the wharf or quay within the meaning of sect. 23 (1) of the Factory Act, 1895, and therefore was not a factory for the purposes of the Workmen's Compensation Act; and in *Merrill* v. *Wilson*, [1901] 1 K. B. 35, the Court of Appeal held that a gangway, which was used by workmen employed in unloading a ship moored alongside a quay as a means of access from the quay to

the ship, but which was not used in the actual loading or unloading of the cargo, was not plant used in the process of loading or unloading within the meaning of the section.

All these decisions are, however, rendered unimportant as from the 1st of January, 1902, by the modifications made by the Factory and Workshop Act, 1901. By virtue of sect. 104 (1) of that Act, all machinery or plant "used in the process of loading or unloading or coaling any ship in any dock, harbour, or canal," is a factory for the purposes of the Workmen's Compensation Act, it being no longer necessary that the loading or unloading should be to or from a dock, wharf, quay, or warehouse; and the expression "plant" for this purpose includes any gangway or ladder used by any person employed to load or unload or coal a ship (sect. 104 (2)).

In *Stuart* v. *Nixon*, [1901] A. C. 79, the question when the process of loading a ship is to be deemed completed for the purposes of the Act arose. The deceased workman was employed with others in slinging beams across the hatchway of the ship by means of machinery after all the cargo had been put into the hold, when, the machinery having become entangled, he went to disentangle it, and in doing so, sustained the injuries of which he died. It was held by the House of Lords that loading or unloading must be treated as a whole transaction, and that the process of loading was not complete until the hatchway was secured. In this case, the machinery employed in the process of loading was all on board the ship, and it was held to be a factory within the operation of sect. 23 of the Factory Act, 1895, and therefore within the meaning of this Act. The decisions of the Court of Session in *Healy* v. *Macgregor*, 1900, 2 Fraser, 634, and the *Aberdeen Steam Trawling Co.* v. *Peters*, 1899, 1 Fraser, 786, to the effect that machinery forming part of the apparatus of a ship was not within the scope of the Acts, are therefore not law.

In *Medd* v. *MacIver*, 1899, 15 T. L. R. 364, it was held by the Court of Appeal that iron gangway doors through which the cargo was taken in and discharged from a ship were not "machinery or plant" used in the process of loading or unloading; and in *Durrie* v. *Warren*, 1899, 15 T. L. R. 365, that a staging

which was fastened outside a ship and was used for the purpose of screwing up the iron doors of the ship after the completion of the loading, was not machinery or plant used in the process of loading or unloading. It may, however, be contended that both these cases are overruled by the decision of the House of Lords in *Stuart* v. *Nixon*, *ante*, p. 95.

Machinery worked by steam, water, or other mechanical power, which is temporarily used for the purpose of the construction of a building or any structural work in connection with a building, is itself a factory within the meaning of the Act, whether the premises containing it are or are not a factory (F. and W. Act, 1895, s. 23 (1) (b); F. and W. Act, 1901, s. 105 (1)). In *McNicholas* v. *Dawson*, [1899] 1 Q. B. 773, a steam-engine, which was erected in a shed and was used in connection with a mortar pan standing outside the shed, the mortar being mixed for the purpose of the erection of a building about twenty yards away, was held to be a factory, being subject the provisions of the Factory Acts set out in sect. 23 (1) of the Act of 1895.

"On, in, or about" machinery or plant.—The question what is the meaning of the words "on, in, or about" when used in relation to machinery, arose in two cases which were taken to the Court of Appeal.

In the first case—*Woodham* v. *Atlantic Transport Co.*, [1899] 1 Q. B. 15—the workman for whose death compensation was claimed was employed in unloading cases of cartridges from a ship moored to a quay in the Royal Albert Docks. A hydraulic crane on the quay was used in the process of unloading; and it was the duty of the deceased workman, who was working on the ship, to put the cartridges into a basket attached to the chain of the crane, which was then set in motion for the purpose of depositing the goods on the quay. While he was placing a case of percussion caps in the basket they exploded, and caused the injuries of which he died. On a case stated by the arbitrator, the County Court Judge held that the deceased was employed on or about the crane at the time of the accident, and the crane being machinery used in the process of unloading

to the quay, and therefore a factory within the meaning of the Act, that the dependants were entitled to compensation. The Court of Appeal upheld the decision.

In the other case (*Lawson* v. *Atlantic Transport Co.*, 1900, 16 T. L. R. 181), goods in bags were being unloaded from a vessel to a quay by means of a crane on the quay. It was the duty of the deceased workman, who was at work in the hold of the vessel, to make up the set of bags for attachment to the crane, and he met with the accident causing his death while engaged in this work. At the time when the accident happened the runner of the crane was not attached to the rope of the set of bags which were being made up, the chain being at that time on the quay. It was contended on behalf of the employers that the case was distinguishable from *Woodham's case*, because the whole of the machinery was on shore at the time of the accident, and the deceased therefore could not be said to be employed on or about the machinery. The County Court Judge held that the employment was "about" the machinery, and awarded compensation, and his decision was upheld by the Court of Appeal.

"Mine" means a mine to which the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, applies.

The Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), applies to "mines of coal, mines of stratified ironstone, mines of shale, and mines of fire-clay" (sect. 3); and "mine" includes "every shaft in the course of being sunk, and every level and inclined plane in the course of being driven, and all the shafts, levels, planes, works, tramways, and sidings, both below ground and above ground, in and adjacent to, and belonging to the mine" (sect. 75).

The Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77), applies to "every sort of mine not a coal mine" (sect. 3). This includes slate quarries worked by underground workings by means of levels (*Sims* v. *Evans*, 1875, 23 W. R. 730). By sect. 41 of the Metalliferous Mines Regulation Act, 1872, the expression "mine" is defined as including "every shaft

(including pit) in the course of being sunk, and every level and inclined plane in the course of being driven for commencing or opening any mine, or for searching for or proving minerals, and all the shafts, levels, planes, works, machinery, tramways, and sidings both below ground and above ground, in and adjacent to a mine and any such shaft, level, and inclined plane, and belonging to the mine."

The words "in and adjacent to, and belonging to the mine" in the Coal Mines Regulation Act, 1887, s. 75, mean "belonging to and being part and parcel of the mine itself, and do not mean belonging to the owner of the mine" (per A. L. Smith, L.J., in *Turnbull* v. *Lambton Collieries Co.*, 1900, 82 L. T. 589, at p. 590, cited *ante*, p. 66. Compare *Monaghan* v. *United Collieries Co.*, 1900, 3 Fraser, 149, cited *ante*, p. 67).

Pit-banks.—Any place above ground adjacent to the shaft of a mine in which the employment of women is not regulated by the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, whether such place does or does not form part of the mine within the meaning of those Acts, is a "factory" within the meaning of this Act if steam, water, or other mechanical power is used in aid of the work carried on (41 Vict. c. 16, s. 93, Sched. IV. (26); 1 Edw. VII. c. 22, s. 149, Sched. VI. (27)).

The Coal Mines Regulation Act, 1887, does regulate the employment of women above ground, but the Metalliferous Mines Regulation Act, 1872, does not. It follows that the pit-banks of metalliferous mines are factories within the meaning of this Act if mechanical power is used, but the pit-banks of coal mines are not.

The question whether employment on or about the pit-banks of a coal mine (or on or about the pit-banks of a metalliferous mine if mechanical power is not used) comes within the scope of this Act, depends, therefore, upon whether such employment can be said to be "on, in, or about" the mine as above defined.

"Quarry" means a quarry under the Quarries Act, 1894:

The Quarries Act, 1894 (57 & 58 Vict. c. 42), s. 1, defines

a quarry as "every place (not being a mine) in which persons work in getting slate, stone, coprolites, or other minerals, and any part of which is more than twenty feet deep."

A quarry, that is to say, "any place, not being a mine, in which persons work in getting slate, stone, coprolites or other minerals," whatever may be its depth, is a "factory" if steam, water, or other mechanical power is used in the working thereof (41 Vict. c. 16, s. 93, Sched. IV. (25); 1 Edwd. VII. c. 22, s. 149 (1) (b), Sched. VI. (26)).

> "Engineering work" means any work of construction or alteration or repair of a railroad, harbour, dock, canal, or sewer, and includes any other work for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used:

The words "any other work" in this definition are not to be construed *ejusdem generis* with the words "railroad, harbour, dock, canal, or sewer," and are not confined to what would ordinarily be called engineering work, but enlarge the meaning of "engineering work" as used in the Act so as to include any kind of work for the construction, alteration, or repair of which machinery driven by mechanical power is used (*Cosgrove* v. *Partington*, 1901, 17 T. L. R. 39). In this case the Court of Appeal held that the putting of a fifth storey on to a mill, a work involving the hoisting of iron girders by means of a steam winch, was an engineering work within the meaning of the Act.

In *Middlemiss* v. *Berwickshire County Council*, 1900, 2 Fraser, 392, the deceased workman, in respect of whose death compensation was claimed, was the driver of a water-cart, who was killed in consequence of his horse bolting. At the time of the accident the deceased was watering a portion of a road which was under repair in order to prepare it for the steam-roller, the roller at the time being about a quarter of a mile away rolling another portion of the road which did not require watering. It was held by the Court of Session that the operations of watering and rolling were both part of the one process

—that of repairing the road; and that, as a steam roller was being used in that process, it was an engineering work, and the applicant was entitled to compensation (see, however, *Chambers* v. *Whitehaven Harbour Commrs.*, [1899] 2 Q. B. 132, cited *ante*, p. 65).

The term "engineering work" is confined to works of construction, alteration, or repair. In *Rae* v. *Fraser*, 1899, 1 Fraser, 1017, it was held by the Court of Session that the lifting of an air-compressor from where it was lying on a quay on to a lorry for removal, the work being done by means of a hydraulic jack, was not an engineering work within the meaning of the Act, not being a work of construction, alteration, or repair. Where, however, machinery driven by electric power was used for the purpose of testing a hay-cutting machine, which it was necessary to test from time to time in the course of its construction, and a workman was injured while the machine was being tested, and when it had only been partially constructed; it was held that the workman was employed on a work for the construction of which machinery driven by mechanical power was used, and which was therefore an engineering work, although only manual labour was employed in the actual fitting up of the machine (*Reid* v. *Fleming*, 1901, 38 Sc. L. R. 720, C. of Sess.).

Where the work is the construction, alteration, or repair of a railroad, harbour, dock, canal, or sewer, it is within the definition of "engineering work," whether machinery driven by mechanical power is used or not.

"*Railroad.*"—The word "railroad" in this section means the same as railway, and is used in its popular sense as including every part of a railway which is necessary to make it a workable undertaking (*Fullick* v. *Evans*, 1901, 84 L. T. 413, C. A.). In this case it was held that the erection of a signal box by the side of a new railway was an engineering work.

"*Other mechanical power.*"—Machinery worked solely by manual labour is not machinery driven by mechanical power within the meaning of the section (*Wrigley* v. *Bagley*, [1901] 1 K. B. 780).

"Undertakers" in the case of a railway means the railway company; in the case of a factory, quarry, or laundry means the occupier thereof within the meaning of the Factory and Workshop Acts, 1878 to 1895; in the case of a mine means the owner thereof within the meaning of the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, as the case may be, and in the case of an engineering work means the person undertaking the construction, alteration, or repair; and in the case of a building means the persons undertaking the construction, repair, or demolition:

Undertakers of a railway.—For definitions of "railway company" and "light railway company," see *ante*, p. 75.

Undertakers of factory, quarry, or laundry.—The Factory Acts do not contain any definition of the expression "occupier." "Occupier" is a well-known expression with a well-known meaning; he is (in the case of a business) the man who occupies business premises and carries on business in them (per Smith, L.J., in *Francis* v. *Turner*, [1900] 1 Q. B. 478, at p. 480). In this case a claim for compensation was made in respect of the death of a workman in the employ of the respondents. The respondents, who were the owners of a factory, having bought an engine in a factory belonging to another firm, sent the deceased, with other workmen, to remove the engine to their own factory; and the accident which caused the death of the deceased happened in the other factory. It was held that the respondents were not the occupiers of the factory in which the accident occurred, and therefore were not liable to pay compensation.

In *Purves* v. *Sterne*, 1900, 2 Fraser, 887, the respondents were a firm of engineers, who had contracted to erect certain ice-making and refrigerating machinery in a building belonging to a cold storage and ice company. The work was practically

completed, and the machinery was being tested by a "preliminary run," when one of the workmen employed by the respondents was killed, and compensation was claimed in respect of his death. During the "preliminary run" the respondents had entire control of the machinery, the ice which was made belonging to the ice company under the contract between the company and the respondents. It was held by the Court of Session, that even if the building or the machinery was a factory within the meaning of the Act, the respondents were not occupiers of it, and were not liable to pay compensation.

It is, however, provided by sect. 142 of the Factory and Workshop Act, 1901, re-enacting, with modifications, sect. 99 of the Act of 1878, that where in a factory the owner or hirer of a machine or implement moved by steam, water, or other mechanical power, is some person other than the occupier of a factory, the owner or hirer shall, as far as respects any offence against the Act committed in relation to a person who is employed in or about or in connection with that machine or implement, and is in the employment or pay of the owner or hirer, be deemed to be the occupier of the factory.

Occupiers of dock, wharf, quay or warehouse.—The undertakers of any dock, wharf, quay or warehouse which is a factory within the meaning of the Act are the persons having the actual use or occupation of such dock, wharf, quay or warehouse, or of any premises within the same or forming part thereof (Factory and Workshop Act, 1895, s. 23 (1); Factory and Workshop Act, 1901, s. 104 (1)).

In *Raine* v. *Jobson*, [1901] A. C. 404; 70 L. J. K. B. 771, a firm of ship repairers who, having no dock of their own, hired a dry dock for the purpose of cleaning and repairing a ship, and were for the time being in the exclusive occupation of such dry dock for that purpose, were held to be "undertakers" within the meaning of the Act, and as such, liable to pay compensation to the dependants of one of their workmen who was killed in the course of his employment on the work.

In *Merrill* v. *Wilson*, [1901] 1 K. B. 35, the respondents were shipowners, who themselves acted as stevedores for the loading and unloading of their vessels. One of the workmen employed by them for the purpose of unloading a ship moored alongside a quay in the Alexandra Dock, Hull, was killed by an accident which happened on the quayside, and compensation was claimed by his widow. It was held by the Court of Appeal that, as the respondents were monopolising the use of a definite portion of the quay for the purpose of unloading, and for as long a time as might be required, the unloading being done by their men, they had the actual use thereof within the meaning of sect. 23 (1) of the Factory Act, 1895, and were therefore "undertakers," and liable to pay compensation. Lord Justice Collins, in delivering judgment (at p. 42), said: "The Act, by a somewhat rough process of legislation, makes the term 'factory,' cover a number of very different subject-matters; but I think they all have the common feature that they must be capable in some way of definition, not perhaps minutely, but sufficiently for practical purposes, with reference to area. Therefore I think that the term could not be applied to such a space as is the subject merely of what may be called '*pedis possessio*,' though on a quay; as for instance the particular spot on which a man stood, or which he occupied in traversing a quay when coming to the quay on such business as the presentment of a bill of lading. It is obviously impossible to apply the term 'factory' as used in the Act, to such an undefinable area. In order to make the respondents liable, therefore, I think there must be some definable area in respect of which, if rightly defined, they can be said to be 'undertakers' in respect of a factory. . . . In the case of merely a few inches of standing room, or the space occupied by a cart on the quay, it would obviously be impossible to say that a person could use or occupy that as a factory. But, if the space of quay used were the length of a ship, I do not see why it should not be capable of being considered a factory within the Act."

The decisions in *Low* v. *Abernethy*, 1900, 2 Fraser, 722, where the Court of Session held that a firm of engineers, who were

engaged in repairing the boiler of a ship lying in a repairing dock, the work being entirely confined to the ship, were not undertakers within the meaning of the Act; and *Bruce* v. *Henry*, 1900, 2 Fraser, 717, where the same Court held that a shipping agent, who undertook the loading of a vessel and used a public dock for the purpose, was not an undertaker, appear to require reconsideration in view of the cases of *Raine* v. *Jobson* and *Merrill* v. *Wilson*, cited *supra*.

Undertakers of machinery and plant.—The undertaker of machinery or plant used in the process of loading or unloading or coaling any ship is the person who by himself, his agents, or workmen, uses any such machinery or plant for such purpose (Factory and Workshop Act, 1895, s. 23 (1); Factory and Workshop Act, 1901, s. 104 (1)).

In *Carrington* v. *Bannister*, [1901] 1 K. B. 20, the respondents were coal shippers, and the applicant was one of the workmen employed by them for the purpose of unloading coal from railway trucks into a ship lying alongside a quay belonging to the railway company. Machinery on the quayside was used in the process of unloading. The machinery belonged to the railway company; but the County Court Judge, who was the arbitrator, found that the respondents' workmen had the possession and sole control of it until the job, which lasted two days, was finished. The respondents were paid by the railway company for unloading the coal from the trucks into the vessel, and by the owners of the vessel for trimming the coal on board. The Court of Appeal confirmed the decision of the County Court Judge that the respondents were undertakers in respect of the machinery. So, where stevedores were loading a ship in a dock by means of machinery on board the ship, it was held by the House of Lords that they were undertakers in respect of the machinery (*Stuart* v. *Nixon*, [1901] A. C. 79; see also *Woodham* v. *Atlantic Transport Co.*, [1899] 1 Q. B. 15).

The undertaker of machinery worked by steam, water, or other mechanical power which is temporarily used for the purpose of the construction of a building, or any structural work in

connection with a building, is the person who, by himself, his agents, or workmen, temporarily uses any such machinery for such purpose (Factory and Workshop Act, 1895, s. 23 (1); Factory and Workshop Act, 1901, s. 104 (1); *McNicholas* v. *Dawson*, [1899] 1 Q. B. 773).

Undertakers of a mine.—The "owner" of a mine is defined in exactly the same terms by the Coal Mines Regulation Act, 1887, s. 75, and the Metalliferous Mines Regulation Act, 1872, s. 41, and means "any person or body corporate who is the immediate proprietor or lessee, or occupier of any mine, or of any part thereof, and does not include a person or body corporate who merely receives a royalty, rent, or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant, or license, for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mine."

Undertakers of a building.—The undertakers in case of a building are defined as "the persons undertaking the construction, repair, or demolition." An owner of a building who contracts with another person for the execution of repairs, and who does not himself engage in any part of the work, is not a person undertaking the repair of the building within the meaning of the Act, and therefore is not an undertaker. In such a case the contractor is the undertaker (see *M'Gregor* v. *Dansken*, 1899, 1 Fraser, 536, C. of Sess.).

Where, however, a person constructs or repairs a building on his own premises, the work being done under his supervision and control, he is the undertaker of the building, although he may contract with others for the execution of particular portions of the work. In *Percival* v. *Garner*, [1900] 2 Q. B. 406, a firm of chemical manufacturers were engaged in erecting a new building on their own premises. They agreed with a contractor for the supply of labour for the brickwork, and the contractor sent bricklayers and labourers as they were wanted for the work. All the men employed on the work, including those sent by the contractor, were under the control of the manufacturers' own foreman, and all the materials required were provided by the manufacturers. The contractor paid the wages of

the men he supplied, receiving from the manufacturers an extra ½*d.* per hour on each man's time, the contractor not being responsible for any part of the work. A bricklayer supplied by the contractor fell from a scaffold and was killed, and the County Court Judge awarded compensation in respect of his death against the contractor. On appeal, the Court of Appeal held that the manufacturers were the undertakers, and not the contractor, and accordingly allowed the appeal. So, where a building contractor was engaged in the erection of a building for his own use, doing the work partly by his own workmen, and partly under contracts with other persons for particular branches of the work, it was held that he was the undertaker of the whole building, and therefore liable to pay compensation to a workman employed by one of such other persons (*Stalker* v. *Wallace*, 1900, 2 Fraser, 1162, C. of Sess.).

Where a contractor for the construction or repair of a building sub-lets particular portions or branches of the work, the sub-contractors are not undertakers within the meaning of the Act (*Cass* v. *Butler*, [1900] 1 Q. B. 777; *Cooper* v. *Davenport*, 1900, 16 T. L. R. 266, cited *ante*, p. 54).

On the other hand, if a building is being constructed by several different contractors, each of whom contracts with the building owner for the execution of a separate substantial part of the work, the building owner not himself undertaking any portion of the work, each of such contractors is an undertaker within the meaning of the Act, and as such is liable to his own workmen for compensation payable under the Act. In *Mason* v. *Dean*, [1900] 1 Q. B. 770, a firm of builders entered into a contract for the erection of a theatre, the contract providing that the building owner should be entitled to take certain portions of the work out of the hands of the builders, and entrust it to others. In pursuance of this provision, the building owner contracted with the respondents for the execution of the decorative work, and one of the workmen employed by the respondents, while engaged in painting the ceiling of the theatre, fell from the scaffolding and was killed. The claim was for compensation in respect of his death. The scaffolding was erected by the builders. The arbitrator appointed by the

County Court Judge awarded compensation, subject to the statement of a case raising the questions whether the respondents were undertakers within the meaning of the Act, and whether the employment in which the injuries were caused to the deceased was an employment to which the Act applied. The County Court Judge set aside the award, on the ground that painting was not an employment to which the Act applied. On appeal, the Court of Appeal reversed the decision of the County Court Judge, and restored the award of the arbitrator. "I think the true meaning" of sect. 7 (2) as to undertakers in case of a building "is that, if any person undertakes a material part of the construction of a building over thirty feet in height which is being constructed by means of a scaffolding, he is an undertaker within the meaning of the Act" (per A. L. Smith, L.J., at p. 774).

> "Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer:
>
> "Workman" includes every person who is engaged in an employment to which this Act applies, whether by way of manual labour or otherwise, and whether his agreement is one of service or apprenticeship or otherwise, and is expressed or implied, is oral or in writing. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants, or other person to whom compensation is payable:

This definition of "workman" is much wider than that given in the Employers and Workmen Act, 1875, and appears to include, not only workmen in the ordinary sense of the term, *i.e.*, those engaged chiefly in manual labour, but also managers, foremen, clerks, overseers, &c., whatever may be the nature of their duties, provided only that they are engaged in an employ-

ment to which the Act applies. Apprentices are expressly included by the definition.

It has been held that an independent contractor—*i.e.*, a person who undertakes to perform certain specified work, or produce a certain specified result, the manner or means of performance or production being left to his discretion, except so far as they are specified by the contract, and the contractor not being subject to the control of the employer in the execution of the work—is not a workman within the meaning of the Act. But the term "workman" is not confined to persons working under a contract of service in the ordinary sense of the term, or a contract of apprenticeship; it includes persons who are only employed casually, under contracts for payment by piecework, provided they are subject to the directions and control of the employer in the execution of the work (see *Stuart* v. *Nixon*, [1901] A. C. 79).

In *Simmons* v. *Faulds*, 1901, 17 T. L. R. 352, the applicant for compensation was a foreman bricklayer, who executed certain building work according to specifications under a contract by tender, the builder supplying the materials. The Court of Appeal held that he was in effect merely a sub-contractor for the supply of labour, and was not a workman within the meaning of the Act, and therefore not entitled to compensation, although he personally took part in the execution of the work.

In *M'Gregor* v. *Dansken*, 1899, 1 Fraser, 536, a case submitted by the Sheriff for the opinion of the Court of Session stated that the appellant was injured while working at slater work on a building thirty feet high, of which the respondent was the undertaker, and that the appellant had "contracted" to do the slater work. The Court of Session (Lord Young, *diss.*) held that sect. 4 of the Act, when read in connection with other sections, excluded by implication a claim by a "contractor" for compensation; and the majority of the Court expressed the opinion that the relationship of master and servant is necessary to constitute a man a workman within the meaning of the Act. Lord Young thought that a contractor might or might not be a workman within the meaning of the Act, and as such entitled to compensation from the undertaker.

In *M'Cready* v. *Dunlop*, 1900, 2 Fraser, 1027, a firm of shipbuilders entered into an arrangement with a squad of skilled workmen called "platers," under which the workmen did certain work in connection with "frames," for which their leader received by weekly payments a fixed sum per frame. After paying the wages of certain unskilled workmen employed by them, the squad divided these sums amongst themselves. The work was done in the shipbuilding yard, and was supervised generally by the shipbuilders' foreman, the necessary plant and materials being supplied by the shipbuilders. The squad were subject to printed rules and regulations "to be observed by the workmen in the employment of" the shipbuilders, and were bound to work continuously during working hours; and when these hours were exceeded, they were entitled to an additional payment of "half-time extra" for the unskilled workmen employed by them. The claim for compensation was made by the widow of one of the squad, who was accidentally killed while at work. The Court of Session held that the deceased was a workman within the meaning of the Act, and that the applicant was entitled to compensation, the Lord President pointing out that the words "or otherwise" in the definition show that the Act is not intended to be confined to persons working under a contract of service or apprenticeship.

Seamen.—Are seamen, as such, excluded from the operation of the Act? They are not excluded expressly, and the definition of "workman" is certainly wide enough to include them, provided they are at the time of the injury engaged in an employment to which the Act applies, such as loading or unloading the ship from or to a dock or quay by means of machinery.

In *O'Hanlon* v. *Dundalk, &c. Steam Packet Co.*, 1899, 33 Ir. L. T. R. 36, a seaman was engaged, under the orders of the mate, in raising one of the ship's boats by means of a crane on the quay, when, in turning the wheel instead of the handle of the crane, a usual practice with seamen, he injured his hand. The arbitrator held that seamen were excluded from the Act while working as such, whether on board ship or on shore, and

that as the applicant was engaged in work which was usually done by seamen, and which was in connection with his employment on the ship, he was not entitled to compensation. This decision was affirmed by the Irish Court of Appeal.

The Court of Appeal in England has not yet been called upon to decide the question. The County Court Judge in *Chambers* v. *Whitehaven Harbour Commissioners* (cited *ante*, p. 65) held that the applicant was not entitled to compensation because the deceased man was employed as a seaman, but on appeal the decision was confirmed on another ground.

The judgments delivered in the House of Lords in *Raine* v. *Jobson* (*ante*, p. 93) seem to support the view that seamen may be workmen within the meaning of the Act, and so entitled to the benefits of it, provided they are employed for the time being on, in or about one of the works specified in the preceding sub-section.

"Other person to whom compensation is payable." —The person here referred to is the person entitled, where there are no dependants, to the expenses of medical attendance and burial under the First Schedule, pars. (1) (a) (iii.), (4).

"Dependants" means—

(a) in England and Ireland, such members of the workman's family specified in the Fatal Accidents Act, 1846, as were wholly or in part dependent upon the earnings of the workman at the time of his death; and

(b) in Scotland, such of the persons entitled according to the law of Scotland to sue the employer for damages or solatium in respect of the death of the workman, as were wholly or in part dependent upon the earnings of the workman at the time of his death.

The Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93), by sect. 2, specifies the wife, husband, parent, and child of the deceased, as

the persons for whose benefit an action under that Act may be brought; and it is provided by sect. 5 that "the word 'parent' shall include father and mother, and grandfather and grandmother, and stepfather and stepmother; and the word 'child' shall include son and daughter, and grandson and granddaughter, and stepson and stepdaughter."

"In Scotland."—The only persons entitled according to the law of Scotland to sue for damages or solatium are the husband or wife, and ascendants and descendants, of the deceased, the basis of the right to sue being partly nearness of relationship, and partly the reciprocal obligation of support (*Darling* v. *Gray*, 1892, 19 R. (H. L.) 31; *Eisten* v. *North British Rail. Co.*, 1870, 8 M. 980). Brothers and sisters, and other collaterals, have no right of action, nor have step-parents or step-children (*Ib.*).

An illegitimate child has no right to sue in respect of the death of his mother, and is therefore not entitled to compensation under the Act, though wholly dependent on the mother for his support (*Clement* v. *Bell*, 1899, 1 Fraser, 924; *Weir* v. *Coltness Iron Co.*, 1889, 16 Rettie, 614); nor has a mother any right of action in respect of the death of her illegitimate child, though he in fact contributed towards her support (*Clarke* v. *Carfin Coal Co.*, [1891] A. C. 412).

Grandchildren whose father is dead, and who are dependent on the earnings of their paternal grandfather, are entitled to compensation under the Act for the death of the grandfather (*Hanlin* v. *Melrose*, 1899, 1 Fraser, 1012).

The mother of the deceased workman is not entitled to compensation, according to the law of Scotland, if the father also is alive. In such a case the award will be made in favour of the father alone (*Barrett* v. *North British Rail. Co.*, 1899, 1 Fraser, 1139).

What is dependency.—Only such of the relatives above mentioned as were wholly or in part dependent upon the earnings of the deceased workman at the time of his death are dependants within the meaning of the Act; and it has been

held in Scotland that there can be no claim under the Act in respect of partial dependency if there is in existence a person who was wholly dependent on the earnings of the deceased at the time of his death (*Fagan* v. *Murdoch*, 1899, 1 Fraser, 1179).

Whether or not there was total or partial dependency in any particular case is generally a question of fact, on which the finding of the arbitrator is conclusive, provided there is any evidence at all in support of such finding.

In *Simmons* v. *White*, [1899] 1 Q. B. 1005, a father claimed compensation in respect of the death of his son, a boy fourteen years of age. Both father and son were in the same employment as miners, the father receiving full wages, and the son seventeen shillings a week. The son lived with his parents, and the father in his evidence stated that the wages of the son were brought home and paid into a common fund, and helped him to maintain his wife and family. The County Court Judge found on this evidence that the father was in part dependent on his son's earnings, and awarded compensation. On appeal, it was held that the question whether the father was dependent on his son's earnings or not was purely one of fact, and that it could not be said there was no evidence to justify the finding of partial dependency. Romer, L.J., while agreeing that there was evidence to justify the finding, expressed the opinion that there must be dependency to some extent for ordinary necessaries, having regard to the class and position in life of the parties; and Collins, L.J., agreed with this view.

The Main Colliery Co. v. *Davies*, [1900] A. C. 358, which was taken on appeal to the House of Lords, was a similar case. The applicant, who was awarded compensation for the death of his son, was a collier earning about twenty-five shillings a week. The son, who earned on an average eight shillings a week, lived with his parents and gave them all his wages, they finding him in food, lodging and clothes, and occasionally giving him small sums for pocket-money. There were five other children, two of whom also brought their earnings into the common fund. The County Court Judge awarded compensation to the applicant as being in part dependent on his son's earnings, and the award was upheld in the Court of Appeal and House of Lords.

The Lord Chancellor, in delivering judgment, at p. 360, said: "It appears to me that a very short question of fact had to be determined by the County Court Judge in disposing of this matter. He has found as a fact that there was a dependency; the extent and degree of that dependency of course is not under appeal. . . . The sole question before us is whether there was any amount of dependency at all. . . . Now, what is dependency? The notion that a person has a legal obligation upon him to keep his whole family when he earns a considerable part of what is required himself, and when the other members of the family only contribute a small part, appears to me to account for the Legislature having introduced not only dependency, but partial dependency. Was there or was there not partial dependency in this case—that is to say, was there evidence upon which the County Court Judge might have come to the conclusion that there was? For my own part I cannot in the least doubt that there was. The whole family were all dependent upon the wages. Whose wages? Partly this boy's wages. It is said that this boy was under no obligation to support his brothers and sisters. No one denies that; but it appears to be forgotten that the obligation is upon the head of the family. He is by law bound to support his family, and he would be punished by law if he did not support them. Therefore, the burden being upon the father of the family, the father of the family in his turn obtains from the wages of those who are being maintained by him a partial contribution to the general family fund. Why is not the father in the discharge of that burden partly dependent upon the earnings which he receives from his children? . . . It appears to me that he must be relying or dependent—call it what you please—for the means by which he discharges his legal obligation upon the funds supplied to him, or partly supplied to him, by the children who earn those funds. . . . My Lords, I am unable to see that there is anything in this case beyond a mere question of fact. I decline to assume that the Legislature has contemplated a particular 'standard' . . . a standard dependent upon what was the ordinary course of expenditure in the

neighbourhood and in the class in which the man lived. . . . What the family was in fact earning, what the family was in fact spending, for the purpose of its maintenance as a family, seems to me to be the only thing which the County Court Judge could properly regard, and, that being the thing which the County Court Judge ought to regard, I think in this case he has regarded it, and accordingly it appears to me that the question of fact, and the only question of fact, was one which the County Court Judge has properly answered."

Lord Shand, while agreeing that there was evidence to justify the award of the County Court Judge, and that the appeal should be dismissed, concurred in the view taken by Collins, L.J., and Romer, L.J., in *Simmons* v. *White*, that "dependent probably means dependent for the ordinary necessaries of life" (or for maintenance of himself and his family) "for a person of that class and position in life."

Lords Morris, Davey, and Brampton entirely concurred in the judgment of the Lord Chancellor. It is therefore finally settled that the only thing which can properly be regarded by the arbitrator as a test of dependency is "*what the family was in fact earning, what the family was in fact spending, for the purpose of its maintenance as a family.*"

In *Cunningham* v. *M'Gregor*, 1901, 38 Sc. L. R. 574, a widow claimed compensation in respect of the death of her husband, from whom she had been living apart for three years preceding his death. The contributions of the husband towards her support during that period had not exceeded £5 a year, her other means of livelihood being occasional employment and contributions from other relatives. It was held by the Court of Session, reversing the decision of the Sheriff, that as the applicant had no other regular and independent means of subsistence, there was nothing to displace the legal presumption that she was wholly dependent for support on her husband, and she was therefore wholly dependent on his earnings within the meaning of the Act.

It has been held by the Court of Appeal in Ireland that the word "dependant" does not include the legal personal representative of a dependant dying subsequently to the death of

the workman (*O'Donovan* v. *Cameron*, 1900, 34 Ir. L. T. R. 169, cited *post*, p. 122).

Any question as to who is a dependant must, in default of agreement, be settled by arbitration (see Sched. I. (5), *post*, p. 134).

(3) A workman employed in a factory which is a shipbuilding yard shall not be excluded from this Act by reason only that the accident arose outside the yard in the course of his work upon a vessel in any dock, river, or tidal water near the yard.

"Factory which is a shipbuilding yard."—A shipbuilding yard is defined by the Factory and Workshop Act, 1878, Sched. IV., Part II., and by the Factory and Workshop Act, 1901, Sched. VI., Part II., as "any premises in which any ships, boats, or vessels used in navigation, are made, finished, or repaired;" and such premises are a factory if therein, or within the close or curtilage or precincts thereof, steam, water, or other mechanical power, is used in aid of the manufacturing process carried on there (Factory and Workshop Act, 1878, s. 93; Factory and Workshop Act, 1901, s. 149 (1)).

In *Spencer* v. *Livett*, [1900] 1 Q. B. 498, it was held by the Court of Appeal that the fact that repairs are being done to a ship lying in a dock does not make the dock a shipbuilding yard within the meaning of this definition. In this case the ship was lying at a jetty in the inner dock at Southampton. The County Court Judge found that it was the usual and ordinary course that ships should be repaired in the dock in question; that the ship was in the dock for the purpose of repairs and was being repaired at the time of the accident; and that the ship's engine and crane were being used in performance of work necessary for the repairs; and that the dock was a shipbuilding yard. The Court of Appeal held that the dock could not properly be said to be a shipbuilding yard within the meaning of the Fourth Schedule of the Factory Act, 1878, and allowed the appeal.

In *Jackson* v. *Rodger*, 1900, 2 Fraser, 533, a firm of

shipbuilders had contracted to build a steamship, including her engines. After being launched at their shipbuilding yard, the ship was taken to a public dock for the purpose of having her engines erected and fitted by another firm with whom the first-mentioned firm had contracted for the engines. It was held by the Court of Session that the dock was not a shipbuilding yard within the meaning of the Act (see also *Brown* v. *Herriot*, 1899, 33 Ir. L. T. R. 123; *Low* v. *Abernethy*, 1900, 2 Fraser, 722).

"Near the yard."—In *M'Millan* v. *Barclay*, 1899, 2 Fraser, 91, a case was stated by the Sheriff for the opinion of the Court of Session as to whether a dock two miles distant from a shipbuilding yard was "near the yard" within the meaning of the Act. The Court held that the question was one of fact depending upon the circumstances of each particular case, and therefore not a question which could be decided on a case stated. The decision of the Sheriff that the dock was near the yard was therefore not disturbed. Lord Adam expressed the opinion that the Act contemplated the case of a ship being taken from the yard to a dock for completion; and Lord M'Laren considered that two miles was within the distance contemplated by the Act, docks and shipbuilding yards being places of considerable extent.

8.—*Application to workmen in employment of Crown.*—(1) This Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to any employment by or under the Crown to which this Act would apply if the employer were a private person.

(2) The Treasury may, by warrant laid before Parliament, modify for the purposes of this Act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that Act, or any such warrant, may frame a scheme with a view to its being certified by the Registrar of Friendly Societies under this Act.

By sect. 1 of the Superannuation Act, 1887 (50 & 51 Vict. c. 67), it is provided that where a person employed in the civil service of the state is injured in the act of his duty, and without his own default, and by some injury specifically attributable to the nature of his duty, the Treasury may grant to him, or, if he dies from the injury, to his widow, his mother, if wholly dependent on him at the time of his death, and to his children, or to any of them, such grant or annual allowance as the Treasury may consider reasonable, and as may be permitted by the terms of a warrant framed by the Treasury under the section. A grant under the section is not to exceed one year's salary of the person injured, and an allowance under the section is not, together with any superannuation allowance to which he is otherwise entitled, to exceed the salary of the person injured, or £300 a year, whichever is less.

This section empowers the Treasury to modify for the purposes of this Act the warrant made in pursuance of the above-mentioned provisions of the Superannuation Act, and to frame a scheme which, on being certified by the Registrar of Friendly Societies, may be accepted by the workmen in the employment of the Crown in substitution for the benefits given by this Act (see sect. 3, *ante*, p. 50). Such a scheme has now been framed and certified under the Act.

As to factories belonging to or in the occupation of the Crown see *ante*, p. 83.

9.—*Provision as to existing contracts.*—Any contract existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this Act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act.

10.—*Commencement of Act and short title.*—(1) This

Act shall come into operation on the first day of July one thousand eight hundred and ninety-eight.

(2) This Act may be cited as the Workmen's Compensation Act, 1897.

SCHEDULES.

FIRST SCHEDULE.

SCALE AND CONDITIONS OF COMPENSATION.

Scale.

(1) The amount of compensation under this Act shall be—

(a) where death results from the injury—

(i.) if the workman leaves any dependants wholly dependent upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act shall be deducted from such sum, and if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be 156 times his average weekly earnings during the period of his actual employment under the said employer;

(ii.) if the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings at the time of his death, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants; and

(iii.) if he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds;

(b) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity after the second week not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed one pound.

(2) In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average weekly earnings of the workman before the accident and the average amount which he is able to earn after the accident, and to any payment not being wages which he may receive from the employer in respect of his injury during the period of his incapacity.

Amount of compensation where death results.—(1) *In case of total dependency.*—Where death results from the injury, and there is any dependant who was wholly dependent on the earnings of the workman at the time of his death, the

amount of compensation is a fixed sum, which the arbitrator has no power to vary. Thus, if the workman leaves a mother, and a widow and children, all of whom were wholly dependent on his earnings at the time of his death, they would receive no more between them than the mother would have received had she been the sole dependant.

Where dependants wholly dependent are left, the amount of compensation, if the workman has been in the employment of the same employer for the three years preceding the injury, is the amount of his earnings during that period; provided that if that amount is less than £150, or more than £300, the amount of compensation is £150 or £300 as the case may be. If the workman has not been in the employment of the same employer for the three years preceding the injury, the amount of compensation is "156 times his average weekly earnings during the period of his actual employment under the said employer," but not exceeding £300 nor less than £150. It was held by the Court of Session in *Russell* v. *M'Cluskey*, 1900, 2 Fraser, 1312, where the workman had only been in the same employment for two weeks, that the maximum limit of £300 was applicable to cases where the employment had been for less than three years; and in *Forrester* v. *M'Callum*, 1901, 38 Sc. L. R. 448, where the employment had only been for portions of two weeks, that the minimum limit of £150 was also applicable. In the latter case the average weekly earnings for the two weeks were twelve shillings, and an award of £150 was upheld. In *Leonard* v. *Baird*, 1901, 38 Sc. L. R. 649, the workman, who was a miner, was killed after descending the pit, but before he had commenced work or earned any wages at all, and it was held the widow was entitled to £150 (see also the judgment of Lord Macnaghten in *Lysons* v. *Knowles*, [1901] A. C. 79, at p. 92).

(2) *In case of partial dependency.*—Where there is any dependant who was wholly dependent on the earnings of a workman at the time of his death, there can be no claim under the Act in respect of partial dependency (*Fagan* v. *Murdoch*, 1899, 1 Fraser, 1179, C. of Sess.). In this case the widow and father survived, the widow being wholly and the father in part

dependent, and it was held that the father had no right to compensation.

In the case of partial dependency, the amount of compensation is to be settled by agreement or arbitration, and "is to be reasonable and proportionate to the injury" to the dependants. In no case may the amount exceed £300.

The Fatal Accidents Act, 1846, provides that in any action under that Act "the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought" (9 & 10 Vict. c. 93, s. 2). It is not necessary in an action under that Act to show that the relatives for whom damages are claimed were dependent on the deceased at the time of his death: it is sufficient if they have lost a reasonable probability of subsequent pecuniary benefit. The Workmen's Compensation Act requires total or partial dependency at the time of the death. Subject to this distinction, the general principles governing the assessment of damages under the Fatal Accidents Act will probably be applied in fixing the amount of compensation to be paid to dependants only in part dependent under this Act.

Under the Fatal Accidents Act, it has been held that only actual or probable pecuniary loss in consequence of the death may be taken into consideration in assessing the damages. Compensation may not be awarded in respect of funeral or mourning expenses (*Dalton* v. *S. E. Rail. Co.*, 1858, 4 C. B. N. S. 296), nor in respect of mental suffering, or the loss of the society of the deceased (*Pym* v. *G. N. Rail. Co.*, 4 B. & S. 396). But a reasonable expectation of pecuniary benefit may be taken into account (*Dalton* v. *S. E. Rail. Co.*, *supra*). If any benefit accrues by reason of the death to the relatives for whom compensation is claimed, as, for instance, under a contract of insurance, the value of such benefit must be deducted from the damages which would otherwise be recoverable. In the case of an accident policy, the amount to be deducted is the total amount received thereunder by the relatives; in the case of a life policy, the benefit consists only in the acceleration of payment, and may be allowed for by deducting the future

premiums from the estimated future earnings of the deceased (*Hicks* v. *Newport, &c. Rail. Co.*, 4 B. & S. 403, n.; *Grand Trunk Rail. Co.* v. *Jennings*, 1888, 13 A. C. 800).

An application for the settlement by arbitration of the amount payable as compensation to the dependants must be made by the legal personal representative, if any, on behalf of such dependants, and he must file, as part of his particulars, particulars as to the dependants on whose behalf the application is made (Rule 4 (1), W. C. R.). Where there is no legal personal representative, the application may be made by the dependants themselves (*Ib.* (2)). If there is any conflict between the dependants themselves, the application may be made by or on behalf of some only of such dependants, the others being named as respondents (*Ib.* (3)). In this Rule the term "dependants" includes persons who claim to be dependants, but whose claim to rank as such is disputed (*Ib.* (4)). See also note to clause 5 of this Schedule (*post*, p. 134) as to the procedure for the settlement of questions between persons claiming to be dependants. As to the payment or investment of sums allotted to dependants, see clauses 4 and 6—8 of the Schedule.

In a case in Ireland, where the sole dependant of the deceased workman died after having served notice of the accident, but without having made any claim or instituted proceedings for the recovery of compensation, it was held that the right to compensation ceased, and did not pass to his representatives (*O'Donovan* v. *Cameron*, 1900, 34 Ir. L. T. R. 169).

As to who are dependants, see *ante*, pp. 110—114; and as to the mode of ascertaining the average weekly earnings, see *post*, pp. 126—132.

(3) *Where no dependants.*—Where there are no dependants, a sum not exceeding £10 may be awarded in respect of the expenses of medical attendance and burial. If there is a legal personal representative, an application for the settlement by arbitration of the sum to be awarded under this head must be made by him; and payment will be made to him (Sched. I. clause 4; Rule 6 (1), W. C. R.). If there is no legal personal representative, any person to whom any of such expenses are due may make the application, joining either as applicant or

respondent any other person known to him as a person to whom any such expenses are due. Where the amount awarded is insufficient to pay for the expenses in full, it may be apportioned as the arbitrator may direct (Rule 6 (2)).

Where total or partial incapacity results.—In this case the compensation is to be a weekly payment during incapacity. Such payment (1) is not to be made in respect of the first two weeks from the injury; (2) is not to exceed £1; and (3) is not to exceed 50 per cent. of the average weekly earnings of the workman during the previous twelve months or any shorter period during which he has been in the employment of the same employer.

The question whether a workman is disabled from earning full wages within the meaning of the Act so as to entitle him to compensation during incapacity depends upon whether "he is capable of performing the work at which he was employed at the time of the accident as efficiently as he did before" (per Rigby, L.J., in *Chandler* v. *Smith*, [1899] 2 Q. B. 506, at p. 513, cited *ante*, p. 20); but clause 2 of this Schedule precludes any order for a weekly payment being made so long as the workman is in fact receiving the same wages as he did before the accident. In *Irons* v. *Davis*, [1899] 2 Q. B. 330, a boy earning nine shillings a week sustained an injury necessitating the amputation of the top joint of his thumb. After eight weeks' absence he was taken back to the service of the employer and employed in a different class of work at the same wages as before. The County Court Judge awarded a weekly payment of 2*s.* 6*d.* for life in respect of the permanent partial incapacity, in addition to 50 per cent. of the wages during the boy's absence from work after the first two weeks. On appeal, it was held that there was no evidence to justify the award of 2*s.* 6*d.* a week or any other sum while the applicant was in fact earning as much as his average wages before the accident. The amount was accordingly reduced to the nominal sum of one penny a week, so that the applicant might, if at any future time he should be unable to earn the same wages as before the accident, apply for a review of the weekly payment under clause 12 of this

Schedule. It has since been decided (see *Chandler* v. *Smith*, *supra*; *Freeland* v. *Macfarlane*, 1900, 2 Fraser 832, cited *ante*, p. 21) that it is not necessary in such a case to award a nominal sum, but that the proper course is to make a declaration of the liability of the employer to pay compensation, and to adjourn the question of the amount and duration thereof.

In *Pomphrey* v. *Southwark Press*, [1901] 1 K. B. 86, a printer's apprentice met with an accident which incapacitated him from skilled labour; and his indentures of apprenticeship were cancelled. At the time of the accident he was earning 10*s.* 6*d.* weekly as an apprentice; and on an application for compensation the County Court Judge awarded him a weekly payment of 3*s.* 6*d.* The employers subsequently took him back as a labourer, in which capacity he earned eleven shillings a week. On an application under clause 12 to terminate the weekly payments, it was proved that the usual wages for labourers were eighteen shillings and the average earnings of skilled workmen thirty-eight shillings a week, which latter sum the applicant would have been able to earn at the end of his apprenticeship. The County Court Judge dismissed the application. On an appeal by the employers, it was held by the Court of Appeal that the fact that the applicant might have been earning more if he had not met with the accident and had lost the benefit of tuition as an apprentice was irrelevant, the value of the tuition not being capable of being estimated in money; and the payments were reduced to one penny a week. "The true reading of the Act is that the average earnings before the accident and after it are to be compared. I am not prepared to say whether the word 'earnings' might not in some cases include more than the earnings paid as wages. For instance, I do not say that in the case of a gardener, supposing him to be within the Act, the fact that he was allowed a cottage free, worth, say, five shillings a week, might not be taken into consideration in arriving at the amount of his weekly earnings" (per A. L. Smith, M.R., at p. 89). Lord Justice Stirling also reserved his opinion as to whether the word "earnings" might not include the value of such things as clothes, or board and lodging, capable of being estimated in money (p. 92). See also *Noel* v. *Redruth Foundry Co.*, [1896]

1 Q. B. 453, a similar case decided under the Employers' Liability Act.

In *G. N. of Scotland Rail. Co.* v. *Fraser*, 1901, 38 Sc. L. R. 653, the applicant was an engine-cleaner, and claimed compensation in respect of the loss of his right arm. The respondent company had offered to take him back at the same wages as before, but he had refused the offer. The Sheriff found as a fact that the applicant was no longer able to do the whole work of an engine-cleaner; that apart from the employer's offer he was not able to earn full wages in that employment; and that he was no longer eligible for certain higher posts to which engine-cleaners have in the ordinary course a chance of attaining. He therefore awarded him six shillings a week. On appeal, the Court of Session held that the applicant was under no obligation to accept the offer of the respondent company in lieu of compensation, and confirmed the award.

Clause 2 of the Schedule is not to be read in conjunction with clause 1 (b) so as to limit the amount of the weekly payments to 50 per cent. of the difference between the average weekly earnings before the accident and the average amount the workman is able to earn afterwards. "All clause 2 means is that the tribunal assessing the compensation is to bear in mind and have regard to the average weekly earnings earned before and after the accident respectively. Bearing that in mind, a limit is placed on the amount of compensation that may be awarded, and the only absolute limit is that which is found in clause 1 (b)—namely, half the amount of the average weekly earnings before the accident" (per Romer, L.J., in *Illingworth* v. *Walmsley*, [1900] 2 Q. B. 142). In this case the average weekly earnings before the accident were thirty-three shillings, and after the accident fifteen shillings; and an award of fifteen shillings a week was upheld by the Court of Appeal (see also *Geary* v. *Dixon*, 1899, 36 Sc. L. R. 640, C. of Sess.).

As to the medical examination of a workman in receipt of a weekly payment, see Sched. I. (11); as to the review of such a payment, *Ib.* (12); and as to the redemption thereof, *Ib.* (13). A weekly payment, or sum paid by way of redemption thereof, is incapable of assignment or attachment (*Ib.* (14)).

"Average weekly earnings." "Employment of same employer."—The period during which the workman has been in the employment of the same employer, referred to in pars. (a) (i.) and (b) of clause 1 of this Schedule, is a period of substantially continuous employment by the same employer up to the date of the accident.

In *Jones* v. *Ocean Coal Co.*, [1899] 2 Q. B. 124, the applicant was employed by the respondent company from October, 1897, to the end of March, 1898, when, a strike being declared, the contract of employment was duly determined by notice. In September, 1898, he again entered into the service of the company under a new contract and on different terms. The accident causing the injury for which compensation was claimed happened on October 3rd, 1898. The County Court Judge held that the earnings for the twelve months preceding the accident should be divided by the number of weeks the applicant was actually at work (the period of the strike being excluded), in order to arrive at the average weekly earnings for the purpose of assessing compensation under clause 1 (b). On an appeal by the workman, the Court of Appeal held that the period contemplated by the clause in question was a period of substantially continuous employment during which the relationship of master and servant existed, and therefore regard could only properly be had to the wages earned between the date of the recommencement of the employment in September and the date of the accident.

In *Appleby* v. *Horseley Co.*, [1899] 2 Q. B. 521, the workman in respect of whose death compensation was claimed had originally been in the employ of the respondent company as a rivetter at a salary of £2 10*s.* a week. In March, 1896, he met with an accident incapacitating him from work for eleven months During this period he was not actually dismissed, but he received no wages from his employers. In February, 1897, he again went into the service of the respondent company as a timekeeper and storekeeper, and was so employed at wages of thirty shillings a week until September, 1898, when the accident happened which resulted in his death. The County Court Judge estimated the average weekly earnings for the purpose of

assessing compensation under clause 1 (a) (i.) by taking into account the wages of the deceased as rivetter before the break in the employment as well as those which he earned as time-keeper and storekeeper. The Court of Appeal held that there was clearly a break in the employment during the eleven months, and that throughout clause 1 of the Schedule the word "employment" should be read as meaning continuous employment. It was further held that the expression "period of actual employment" could only mean a period during which the workman was in fact employed and doing work for his employer; and that the County Court Judge was wrong in applying the Interpretation Act to the present case and reading "period" as "periods." The appeal of the respondent company was accordingly allowed, and the compensation based on the earnings between February, 1897, and the date of the accident in September, 1898.

In *Hewlett* v. *Hepburn*, 1899, 16 T. L. R. 56, the accident happened on February 6th, 1899. The workman was a carpenter and had been employed regularly by the respondents from August, 1897, to February, 1898. From then until May, 1898, he was absent from work owing to illness. In May, 1898, he returned to work, but was again absent from August 18th to September 3rd. From September 3rd to the date of the accident he was at work. No notice had been given to terminate the employment, and the workman's tools had throughout been left at the respondents' works. There had been no agreement as to giving notice, but notice was generally given to terminate an engagement of that kind. Payment was by the hour, and no wages had been paid during the periods of absence from work. The County Court Judge found that the employment was by the hour, and came to an end on August 18th, 1898; and he assessed the compensation on the average weekly earnings from September 3rd to the date of the accident. The Court of Appeal held that it was a question of fact whether there had been a break in the employment, and that there was evidence to justify the finding that it had terminated on August 18th. The appeal was accordingly dismissed.

In *Williams* v. *Poulson*, 1899, 16 T. L. R. 42, also, the appeal was dismissed on the ground that it was a question of

fact whether or not the employment was continuous. The workman was a dock labourer, and was employed casually, sometimes working for one stevedore, sometimes for another. From March, 1898, to the date of the accident in January, 1899, he had worked for the respondent in every week except four, though sometimes for only one day in the week. The County Court Judge assessed the compensation by taking the total earnings during the whole of the period from March, 1898, and dividing that sum by the number of weeks in which work had been done for the respondent, and the Court of Appeal held that there was evidence to justify the finding that the employment was continuous.

In *Keast* v. *Barrow, &c. Steel Co.*, 1899, 63 J. P. 56, the workman, who claimed compensation for partial incapacity, had been employed by the respondent company for some years. During the twelve months preceding the accident he had been absent from work for periods amounting altogether to several weeks, and the County Court Judge estimated the average weekly earnings by dividing the total amount earned during the twelve months by the number of weeks he had actually worked. The Court of Appeal held that, as the County Court Judge must be taken to have found that the periods of absence did not constitute a break in the continuity of the employment, the average weekly earnings must be arrived at by dividing the amount of the total earnings during the twelve months by fifty-two, and not by the number of weeks of actual work. So, in *Small* v. *M'Cormick*, 1899, 36 Sc. L. R. 700, the Court of Session held that in the case of a piece-worker, employed at irregular intervals, the average weekly earnings must be estimated by dividing the total amount of wages earned by the number of weeks contained in the period over which the Sheriff had found as a fact that his employment had extended.

It is not necessary that the workman should be employed in the same kind of work during the whole of the period, but only that he should be in the service of the same employer. In *Price* v. *Marsden*, [1899] 1 Q. B. 493, compensation was claimed in respect of partial incapacity. The applicant had been in the

service of the respondents for the whole of the twelve months previous to the accident, being employed for the first forty-nine weeks of that period at wages of 9*s.* 6*d.* a week. He was then promoted to a higher class of work, and earned 13*s.* 6*d.* a week during the three weeks immediately preceding the accident. The Court of Appeal held that the County Court Judge was right in adding the total earnings for the whole period of twelve months together, and dividing that sum by fifty-two, in order to arrive at the "average weekly earnings."

Employment for less than two weeks.—It has now been finally settled by the House of Lords, reversing the Court of Appeal, that the right to compensation under the Act is not confined to cases where the workman has been employed by the same employer for two weeks at least (*Lysons* v. *Knowles*; *Stuart* v. *Nixon*, [1901] A. C. 79, H. L.: reversing [1900] 1 Q. B. 78, and [1900] 2 Q. B. 95, C. A.).

In *Lysons* v. *Knowles* the applicant worked as a collier in the employ of the respondents on Tuesday, July 18th, 1899, and again on Thursday in the same week, earning for each day's work 6*s.* as a piece worker. In the colliery in question the miners' week began on Wednesday morning and ended on Tuesday night. The County Court Judge assessed the average weekly earnings at 12*s.*, and awarded compensation on that basis. The Court of Appeal held that the applicant was not entitled to any compensation at all, and set aside the award. On appeal to the House of Lords it was held that the applicant was entitled to compensation, but that, having regard to the days on which the miners' week commenced and ended, the average weekly earnings must be computed at 6*s.*, and the amount of the award was reduced accordingly.

In *Stuart* v. *Nixon* the workman in respect of whose death compensation was claimed was a casual labourer, not working continuously for one employer; and when the accident happened he had been employed by the respondents for five days continuously at daily wages. The House of Lords sent this case back to the County Court Judge to assess the amount of compensation, but did not decide on what principle it ought to be assessed.

In *Russell* v. *M'Cluskey*, 1900, 2 Fraser, 1312, the deceased workman was employed by the day, and had worked for the respondents for three days in one week, and for four days and part of a fifth in the following week, the accident happening on the fifth day. It was held by the Court of Session that there was sufficient basis for calculating the average weekly earnings of the deceased; Lord Adams expressing the opinion that the actual earnings for each week should be taken irrespective of the number of working days in that week; and Lord M'Laren that "average weekly earnings" simply means the arithmetical mean arrived at by dividing the total earnings by the number of weeks in which the workman was employed, including the case of employment during only one week. See also *Cadzow Coal Co.* v. *Gaffney*, 1900, 3 Fraser, 72, C. of Sess. In the latter case Lord Trayner expressed the opinion that "week" means calendar week, commencing on Monday and ending on Saturday, in the absence of any special rule or custom in the particular employment by which the working week commences on some other day.

In *Nelson* v. *Kerr*, 1901, 38 Sc. L. R. 645, the workman was a miner. He entered the service of the respondents on a Tuesday, and worked on that and the two following days, earning during that week, which ended on Saturday, 16*s.* 2*d.* On the following Monday the accident happened before any wages at all had been earned. It was held by the Court of Session that the "average weekly earnings" were 16*s.* 2*d.*

All these cases are consistent with the judgments of the House of Lords in *Lysons* v. *Knowles* and *Stuart* v. *Nixon*; and establish that where there has been employment by the respondents for only one week or part of a week, the actual earnings in that week must be taken as the basis for calculating the amount of compensation. Where there has been substantially continuous employment during more than one week, the "average weekly earnings" must be estimated by dividing the total earnings during the period of employment by the number of weeks in that period.

Earnings in employment of same employer. Meaning of "earnings."—Only the amount earned by the

workman in the service of the employer in whose employment the injury is sustained can be taken into consideration as a basis for compensation, whether in case of death or of total or partial incapacity.

In *Hathaway* v. *Argus Printing Co.*, [1901] 1 K. B. 96, the applicant was a printer's cutter, who had entered into an agreement to work for the respondent company on Thursday and Friday night in each week, the agreement to continue for two weeks certain, and then to be determinable by a week's notice, and the wages to be 8*s.* 8*d.* for each night's work. The applicant was only bound to work for the company on the two nights mentioned in each week, but he sometimes came to inquire whether there was any day work for him, and if so, he stayed and did it. He also worked for other employers. The accident happened in the third week. In addition to the regular weekly wages of 17*s.* 4*d.*, the applicant had earned in the employment of the respondent company for casual work sums amounting to an average of fourteen shillings a week, and also certain sums from other employers. The County Court Judge, in assessing the compensation, disregarded the earnings for casual work, and awarded a weekly payment of 8*s.* 8*d.*, being 50 per cent. of the regular weekly wages; and the Court of Appeal held that he was right. So far as concerns the wages for casual work earned in the employment of the respondent company, this decision must probably be considered overruled by the judgments of the House of Lords in *Lysons* v. *Knowles* and *Stuart* v. *Nixon* (*supra*, p. 129).

In *Houghton* v. *Sutton Heath Colly. Co.*, [1901] 1 K. B. 93, the claim for compensation was in respect of the death of a miner in the employ of the respondent company. The company supplied the oil for the lamps used by the miners, and deducted sixpence a week from their wages for the oil so supplied. The Court of Appeal held that the County Court Judge was right in assessing the compensation on the basis of the full wages earned by the deceased irrespective of this deduction.

In *Nelson* v. *Kerr*, 1901, 38 Sc. L. R. 645, where the workman, who was a miner, was assisted in his work by his son, to whom he paid no wages, it was held by the Court of Session

that no deduction from the earnings ought to be made in respect of the work done by the son, in estimating the average weekly earnings of the father, though it was usual for the miners to pay boys so assisting them a fixed sum per day.

In estimating the earnings of an apprentice, the value of the tuition cannot be taken into consideration, because such value is too uncertain to be capable of being estimated in money (*Pomphrey* v. *Southwark Press*; *Noel* v. *Foundry Co.*; cited *ante*, p. 124). The word "earnings" may, however, include other things besides earnings in money, provided such things are capable of valuation (*Ib.*).

(3) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and any proceeding under this Act in relation to compensation, shall be suspended until such examination takes place.

Medical examination.—In *Osborn* v. *Vickers*, [1900] 2 Q. B. 91, a workman, who had not given any notice of accident as required by sect. 2 of the Act, commenced proceedings for compensation. The employers did not take any objection on the ground of want of notice, but required the workman to submit himself for medical examination, which he refused to do unless the employers paid for the attendance at the examination of a medical practitioner on his own behalf, as well as for the one provided by them. On the day of the hearing of the arbitration the employers asked the County Court Judge, who acted as arbitrator, to suspend the proceedings on the ground that the applicant had refused to submit himself for medical examination; and the Judge ordered that he should so submit himself on condition that the employers would pay for the attendance at the examination of a medical man on the applicant's behalf, and adjourned the hearing. The

Court of Appeal held that though there had been no notice the employers were entitled, after the commencement of the proceedings, to require the workman to submit himself for medical examination in pursuance of this paragraph, and that the County Court Judge had no jurisdiction to impose any term as a condition of his being bound to do so. The appeal of the employers was accordingly allowed. "I do not say that there might not be special circumstances in a case, rendering it so essential to the well-being of the person to be examined to have some medical man conversant with his constitution and state of health present at the examination, that it might be considered a necessary part of the examination that such a person should be present. Possibly such a case might arise. But in the present case there are no such special circumstances" (per Collins, L.J., at p. 94).

It is only the employer who is entitled to require submission to medical examination under this clause; but under clause (11), which applies to workmen receiving weekly payments under the Act, not only the employer, but also any person who is liable to indemnify the employer under the fourth or sixth section of the Act, has a right to require such an examination from time to time (*post*, p. 136).

Application to stay proceedings.—An application to stay proceedings under this clause on the ground that the workman refuses to submit himself for examination, or obstructs such examination, must be made on notice in writing (Form 24, W. C. R.); and such notice must be filed with the registrar, and a copy thereof served on the workman five clear days at least before the hearing of the application, unless leave is given for shorter notice (Rules 50 (2), 45, W. C. R.).

(4) The payment shall, in case of death, be made to the legal personal representative of the workman, or, if he has no legal personal representative, to or for the benefit of his dependants, or, if he leaves no dependants, to the person to whom the expenses are due; and if made to the legal

personal representative shall be paid by him to or for the benefit of the dependants or other person entitled thereto under this Act.

This clause must be read together with the following three clauses. The arbitrator is not bound to order payment to the legal personal representative where the application for arbitration is made by him on behalf of himself and other dependants, but may, under clauses (6) and (7), order so much of the compensation as is allotted to the other dependants to be paid to the registrar of the County Court for investment in his name as registrar on their behalf (*Daniel* v. *Ocean Coal Co.*, [1900] 2 Q. B. 250).

The "person to whom the expenses are due" refers to the person entitled to compensation under clause 1 (a) (iii.) in respect of the expenses of medical attendance and burial (*ante*, p. 119).

As to the protection of the sum awarded as compensation from any lien for costs, except such costs as may be allowed by the arbitrator, see Sched. II. (12), *post*, p. 152.

(5) Any question as to who is a dependant, or as to the amount payable to each dependant, shall, in default of agreement, be settled by arbitration under this Act.

Where the amount payable as compensation to the dependants has been agreed upon or ascertained, an application for the settlement by arbitration of any question as to who are dependants, or as to the amount payable to each dependant, may be made either by the legal personal representative (if any) on behalf of the dependants or any of them, or, if there is no legal personal representative, by the dependants or any of them, against the other dependants and persons claiming to be dependants; or the application may be made by any of the persons claiming to be dependants against the legal personal representative (if any), and the dependants, and such of the persons claiming to be dependants as are not applicants (Rule 5 (1), W. C. R.). It is not necessary to make the

employer a respondent to any such application if he has already paid the whole amount of the compensation. If, however, the compensation or any part thereof is still in his hands, he must be made a respondent, but upon payment of the amount into Court further proceedings against him will be stayed (Rule 5 (2) and (3)).

As to the procedure under this clause where the amount of compensation has not been agreed upon or ascertained, see *ante*, p. 122.

(6) The sum allotted as compensation to a dependant may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed, or as ordered by the committee or other arbitrator.

(7) Any sum which is agreed or is ordered by the committee or arbitrator to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the County Court in his name as registrar.

(8) Any sum to be so invested may be invested in the purchase of an annuity from the National Debt Commissioners through the Post Office Savings Bank, or be accepted by the Postmaster-General as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings bank and the declaration to be made by a depositor, shall not apply to such sums.

(9) No part of any money invested in the name of the registrar of any County Court in the Post Office Savings Bank under this Act shall be paid out, except upon authority addressed to the Postmaster-General by the Treasury or by the Judge of the County Court.

(10) Any person deriving any benefit from any moneys invested in a post office savings bank under the provisions of this Act may, nevertheless, open an account in a post office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

See Rule 59 (W. C. R.), *post*, p. 216, as to the payment and application of money directed to be invested under clauses (6) and (7). The investment is to be made by the registrar of the Court in which the memorandum of the agreement or order under which the sum is to be invested is recorded (see Sched. II. 8), or, in the case of an award made by the County Court Judge or an arbitrator appointed by him, by the registrar of the Court in which the award or order was made (Rule 59 (a)).

(11) Any workman receiving weekly payments under this Act shall, if so required by the employer, or by any person by whom the employer is entitled under this Act to be indemnified, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, or such other person; but if the workman objects to an examination by that medical practitioner, or is dissatisfied by the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed for the purposes of this Act, as mentioned in the Second Schedule to this Act, and the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition. If the workman refuses to submit himself to such examination, or in any way obstructs the same,

his right to such weekly payments shall be suspended until such examination has taken place.

Medical referees.—Sched. II. (13) provides for the appointment by the Secretary of State of legally qualified medical practitioners for the purpose of the Act, whose expenses are to be paid out of money to be provided by Parliament (*post*, p. 154). It is to one of the medical practitioners so appointed that a workman may submit himself for examination under this paragraph if he objects to examination by, or is dissatisfied by the certificate of, the medical man provided by the employer or other person entitled to require the examination. As to the conclusive nature of the certificate of the medical referee, see *Boase Spinning Co.* v. *M'Avan*, 1901, 38 Sc. L. R. 772, C. of Sess.

The Treasury Regulations relating to medical referees, which are set out in Appendix C., apply only to references made by an arbitrator under Sched. II. (13). Where a workman submits himself for examination under this paragraph, the fee for such examination must be paid by him; and if the certificate of the referee is used in any subsequent arbitration, such fee, together with any reasonable travelling and other expenses incurred by the workman in obtaining the certificate, may be allowed as costs in the arbitration (Rule 33 (4), W. C. R.).

Applications for suspension of weekly payments.—The procedure on an application for suspension of weekly payments under this clause is governed by Rule 50 (W. C. R.). The application may be made in or out of Court, in accordance with the provisions of Rule 45; but the notice of the application (Form 24) must be served five clear days at least before the hearing, unless leave is given for shorter notice (Rule 50 (2) (a)); and the application must in every case be made to the Judge (*Ib.* (b)).

(12) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished or increased, subject to the maximum above provided, and the amount

of payment shall, in default of agreement, be settled by arbitration under this Act.

An application under thi clause for a review of a weekly payment will not be entertained where there has been no change in the circumstances of the case since the award. The provision is not intended to enable a party who is dissatisfied with the result of an arbitration to re-open the original question; but only to enable either of the parties to have the award reviewed in the event of an increase or decrease in the earning capacity of the workman.

In *Crossfield* v. *Tanian*, [1900] 2 Q. B. 629, the respondents had failed to file an answer as required by the Rules in the original arbitration, and consequently the County Court Judge, who was the arbitrator, had accepted the applicant's statement of the amount of his earnings as the basis of the award. The ground of the application for a review was that the award was made under a mistake as to the earnings, and it was admitted that there had been no change in the circumstances. The Court of Appeal held that the County Court Judge was right in dismissing the application for a review.

Where, on a review, it is found that the workman, though partially incapacitated, is earning as much as he was before the accident, the proper course is to reduce the amount of the weekly payment to a nominal sum (see *Pomphrey* v. *Southwark Press*, [1901] 1 K. B. 86).

Where the original arbitration took place before an arbitrator appointed by the County Court Judge, the arbitration by way of review will be taken before the same arbitrator, if his services are available, unless the Judge otherwise directs (Rule 31, W. C. R.). For form of the application for a review, see Form 5 (Appendix to W. C. R.).

Where insurers are ordered in pursuance of sect. 5 of the Act to make a weekly payment direct to the workman, such insurers have the same right of review of such weekly payment as the employer (Rule 55, W. C. R.).

(13) Where any weekly payment has been continued for not less than six months, the liability therefor may,

on the application by or on behalf of the employer, be redeemed by the payment of a lump sum, to be settled, in default of agreement, by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator to be invested or otherwise applied as above mentioned.

Insurers who are ordered to make a weekly payment direct to the workman in pursuance of the provisions of sect. 5 of the Act have the same rights as the employer with respect to the redemption of such weekly payment (Rule 55, W. C. R.).

The application for an arbitration with respect to the redemption of a weekly payment should be in accordance with Form 5 in the Appendix to the W. C. R. The arbitration will be taken before the arbitrator who made the award, if his services are available, unless the Judge otherwise directs. (Rule 31, W. C. R.).

A sum paid by way of redemption is not capable of being assigned or charged (see the next clause).

As to the payment and application of money directed to be invested, see Rule 59, W. C. R.

(14) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

(15) Where a scheme certified under this Act provides for payment of compensation by a friendly society, the provisions of the proviso to the first sub-section of section eight, section sixteen, and section forty-one of the Friendly Societies Act, 1896, shall not apply to such society in respect of such scheme.

The provisions of the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), referred to, are as follows :—

S. 8. (1) "Provided that a friendly society which contracts

with any person for the assurance of an annuity exceeding £50 per annum, or of a gross sum exceeding £200, shall not be registered under this Act."

S. 16. "A society assuring a certain annuity shall not be entitled to registry, unless the tables of contributions for the assurance, certified by the actuary to the National Debt Commissioners, or by some actuary appointed by the Treasury who has exercised the profession of actuary for at least five years, are sent to the registrar with the application for registry."

S. 41. (1) "A member, or person claiming through a member, of a registered society or branch, shall not be entitled to receive more than £200 by way of gross sum, together with any bonuses or additions declared upon assurances not exceeding that amount, or (except as provided by this Act) fifty pounds a year by way of annuity, from any one or more of such societies or branches."

(2) "Any such society or branch may require a member, or person claiming through a member, to make and sign a statutory declaration that the total amount to which that member or person is entitled from one or more such societies or branches does not exceed the sums aforesaid."

(16) In the application of this schedule to Scotland the expression "registrar of the County Court" means "sheriff clerk of the county," and "Judge of the County Court" means "sheriff."

(17) In the application of this Act to Ireland the provisions of the County Officers and Courts (Ireland) Act, 1877, with respect to money deposited in the Post Office Savings Bank under that Act shall apply to money invested in the Post Office Savings Bank under this Act.

SECOND SCHEDULE.

ARBITRATION.

The following provisions shall apply for settling any matter which under this Act is to be settled by arbitration :—

(1) If any committee, representative of an employer and his workmen, exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects, by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as herein-after provided.

(2) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within three months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the County Court Judge, according to the procedure prescribed by Rules of Court, or if in England the Lord Chancellor so authorises, according to the like procedure, by a single arbitrator appointed by such County Court Judge.

(3) Any arbitrator appointed by the County Court Judge shall, for the purposes of this Act, have all the powers of a County Court Judge, and shall be paid out

of moneys to be provided by Parliament in accordance with regulations to be made by the Treasury.

(4) The Arbitration Act, 1889, shall not apply to any arbitration under this Act; but an arbitrator may, if he thinks fit, submit any question of law for the decision of the County Court Judge, and the decision of the Judge on any question of law, either on such submission, or in any case where he himself settles the matter under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by Rules of the Supreme Court either party appeals to the Court of Appeal; and the County Court Judge, or the arbitrator appointed by him, shall, for the purpose of an arbitration under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the claim for compensation had been made by plaint in the County Court.

Powers of the arbitrator.—Where the arbitration is by a committee or arbitrator agreed upon by the parties, there is no power to compel the attendance of witnesses or the production of documents. Witnesses who attend voluntarily may be examined on oath, but they cannot be required to answer questions. The Workmen's Compensation Rules apply only to arbitrations before the County Court Judge or an arbitrator appointed by him. As to the procedure generally on an arbitration in the County Court, see *ante*, pp. 33 to 41.

A County Court Judge has no jurisdiction to grant a new trial or re-open an arbitration heard by him (*Mountain* v. *Parr*, [1899] 1 Q. B. 805, C. A.). The only remedy of a party who is dissatisfied with the result of an arbitration is, in the case of a decision of an arbitrator other than the County Court Judge, to apply for the submission of any question of law for the decision of the County Court Judge; or, in the case of a decision of the County Court Judge, whether on any such submission or

where he himself settles the matter as arbitrator, an appeal to the Court of Appeal.

As to the powers of the arbitrator with regard to costs, see paragraph (6), *post*, p. 145.

Submission of questions of law.—Any committee or arbitrator other than the County Court Judge may submit any question of law arising in the arbitration for the decision of the County Court Judge. Such submission must be in the form of a special case (Rule 30 (1) and (2), W. C. R.), which must be signed by the arbitrator and sent to the registrar, who will give notice to the parties of the time and place fixed for the hearing (*Ib.* (3)), and will, on application and at the cost of any party, furnish him with a copy of the case (*Ib.* (4)). On the hearing the Judge may, after deciding the question submitted, remit the case to the arbitrator to proceed thereon in accordance with such decision; or, if such decision disposes of the whole matter, may himself make an award in the arbitration (*Ib.* (5)). The costs of the special case are in the discretion of the Judge (*Ib.* (7)).

Appeals to the Court of Appeal.—An appeal to the Court of Appeal under this paragraph will lie only on a question of law. The finding of the arbitrator is in all cases conclusive on any question of fact, provided there is some evidence in support of such finding.

The procedure with reference to such appeals is regulated by the Rules of the Supreme Court (Rule 36, W. C. R.). These Rules are set out in Appendix B.

When judgment has been given by the Court of Appeal on any such appeal, any party may deposit the order of the Court of Appeal, or an office copy thereof, with the registrar of the County Court, and such order, upon being filed, has the same effect as if it were the decision of the County Court Judge (Rule 37 (1), W. C. R.). If such order has the effect of an award or decision in favour of any party, it is to be served and recorded, and may be proceeded on, in the same manner as if it were an award or decision of the County Court Judge (*Ib.* (2)). Generally the County Court Judge will make such award or

give such decision, and give such directions and take or direct such proceedings, as may be necessary to give effect to the order of the Court of Appeal (*Ib.* (3)—(5)).

As to the duty of the County Court Judge to make a note of any question of law raised at the hearing of any arbitration or special case, and the duty of the party appealing to furnish a copy of such note for the use of the Court of Appeal, see W. C. R. 35, and R. S. C. Order 58, Rule 20 (b).

Security for costs of appeal.—The ordinary rule of practice of the Court of Appeal as to ordering security for the costs of an appeal applies to appeals under this Act. The ordinary rule is "that, except in applications for new trials, where the respondent can show that the appellant, if unsuccessful, would be unable through poverty to pay the costs of the appeal, an order for security for costs is made" (*Hall* v. *Snowden*, [1899] 1 Q. B. 593). And an appeal from the decision of a County Court Judge on an arbitration under the Act is not in the nature of an application for a new trial (*In re Harwood*, [1901] 2 K. B. 304).

Where, however, the County Court Judge stayed execution pending an appeal, and thereby in effect invited the workman against whom the decision was given to appeal in order to have the point of law determined, it was held that the case formed an exception to the general rule, and that the workman, although he would be unable to pay the costs if unsuccessful, ought to be allowed to appeal without giving security (*Hubball* v. *Everitt*, 1900, 16 T. L. R. 168).

An appeal lies from any decision of the Court of Appeal under the Act to the House of Lords.

This paragraph does not apply to Scotland (Sched. II. (15)). As to arbitrations and appeals in Scotland, see paragraph (14) and note, *post*, p. 156.

(5) Rules of Court may make provision for the appearance in any arbitration under this Act of any party by some other person.

Appearance of parties.—A party to any arbitration under the Act may appear—

(a) In person :

(b) By a solicitor acting generally in the matter for such party, but not a solicitor retained as an advocate by the solicitor so acting (see County Courts Act, 1888, s. 72) :

(c) By counsel :

Or, by leave of the County Court Judge or arbitrator, a party may appear—

(d) By a member of his family :

(e) By a person in the permanent and exclusive employment of such party :

(f) In the case of a company or corporation, by any director of the company or corporation, or by the secretary or any other officer or any person in the permanent and exclusive employment of the company or corporation :

(g) By any officer or member of any society or other body of persons of which such party is a member or with which he is connected : or

(h) Under special circumstances, by any other person (Rule 32 (1), W. C. R.). But no person other than a solicitor or counsel is entitled to have or recover any fee or reward for so appearing or acting, other than such travelling expenses, and (in the case of a workman or a member of his family) allowance for time as may be allowed by the Judge or arbitrator (*Ib.* (2)).

(6) The costs of and incident to the arbitration and proceedings connected therewith shall be in the discretion of the arbitrator. The costs, whether before an arbitrator or in the County Court, shall not exceed the limit prescribed by Rules of Court, and shall be taxed in manner prescribed by those rules.

Costs.—Where costs are directed by the County Court Judge or by an arbitrator (whether agreed on by the parties or appointed by the Judge) to be paid by one party to the other,

they will, in default of agreement between the parties as to the amount of such costs, be taxed according to such one of the scales of costs applicable to actions in the County Court as the Judge or arbitrator may direct, and in default of such direction, according to the scale which would be applicable if the proceeding had been an action in the County Court (Rule 33 (1) W. C. R.). The provisions of Order 50A, Rule 7, of the County Court Rules, by which the Judge is given power to allow certain special items of costs in certain cases, apply to arbitrations under the Act (*Ib.* (1) (a)).

Where the subject-matter of the arbitration is not a capital sum, the arbitrator may determine, for the purpose of costs, what shall be considered the amount of the subject-matter thereof (Rule 33 (2)).

In dealing with the question of costs, the arbitrator may take into consideration any offer of compensation made by the employer (*Ib.* (3)). This empowers the arbitrator, if he thinks fit, to allow a definite sum for costs without taxation. In *Welland* v. *G. W. Rail. Co.*, 1900, 16 T. L. R. 297, the employer had made an offer of 7*s.* 6*d.* a week ; and the County Court Judge, who acted as arbitrator, refused to make any award, on the ground that this offer ought to have been accepted by the workman. The Court of Appeal remitted the case to the County Court Judge to proceed with the arbitration, and ordered the respondents to pay the costs of the former hearing. On the case coming back to him, the County Court Judge awarded a weekly payment of 7*s.* 6*d.*, and fixed the applicant's costs, which he ordered the respondents to pay, at £5. The applicant then applied to the Court of Appeal for a direction that the costs should be taxed in pursuance of the former order made by that Court. The Court of Appeal held—(1) that the application, being for an order in the nature of a *mandamus*, ought to have been made to a Divisional Court; (2) that Sched. II. (6) is subject to Rule 33 (3), and that, having regard to that Rule, and the offer made by the respondents, the County Court Judge had properly exercised his discretion in the matter of costs.

As to the allowance of expenses incurred by the workman in

submitting himself for examination by a medical referee, see *ante*, p. 137, and *post*, p. 155.

Where costs are awarded by an agreed arbitrator, it is the duty of the registrar of the Court in which a memorandum of the decision is recorded pursuant to paragraph 8 (*post*, p. 148), to tax the costs, and enter in the register the amount allowed on taxation; and such entry is deemed to be part of the memorandum (Rule 34, W. C. R.).

Where a party to whom costs are awarded acts by a solicitor, such solicitor has the same authority to take out of Court or receive any sum paid into Court or payable in respect of such costs as he would have if the costs were awarded in an action (Rule 34 (a)).

As to the allowance and taxation of costs as between the person to whom any compensation is awarded and his solicitor or agent, see paragraph 12, and note, *post*, p. 153.

(7) In the case of the death or refusal or inability to act of an arbitrator, a Judge of the High Court at Chambers may, on the application of any party, appoint a new arbitrator.

An application for the appointment of a new arbitrator under this paragraph must be made by summons (Order 54, Rule 1 (a), R. S. C.). In the King's Bench Division the application should be made to a Master in Chambers (see Order 54, Rule 12, R. S. C.).

Where the new arbitrator is appointed in the place of an arbitrator appointed by the County Court Judge, the party obtaining the appointment must lodge with the registrar of the County Court the order appointing such arbitrator, or a duplicate or copy thereof under the seal of the High Court, and the arbitration then proceeds as if such arbitrator had been appointed by the County Court Judge (Rule 27 (e), W. C. R.).

This paragraph does not apply to Scotland (Sched. II. (15)).

(8) Where the amount of compensation under this Act shall have been ascertained, or any weekly payment varied, or any other matter decided, under this Act, either by a committee or by an arbitrator or by agreement,

a memorandum thereof shall be sent, in manner prescribed by Rules of Court, by the said committee or arbitrator, or by any party interested, to the registrar of the County Court for the district in which any person entitled to such compensation resides, who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the said memorandum shall for all purposes be enforceable as a County Court judgment. Provided that the County Court Judge may at any time rectify such register.

Record of memorandum and rectification of register. — The proceedings under this paragraph are governed by Rules 38—45 (W. C. R.). The memorandum (Form 16) in case of any matter decided by agreement may be sent by any party interested, and in the case of a matter decided by arbitration, by the committee or arbitrator or any party interested. It is to be left at, or sent by registered post to, the office of the registrar of the County Court for the district in which any person entitled to the compensation resides, as soon as may be after the matter has been decided (Rule 38 (1)); and if a report has been made by a medical referee under paragraph 13 (*post*, p. 154), a copy of the report must be annexed to the memorandum and recorded therewith (Rule 38 (2)).

The memorandum will be recorded by the registrar without further proof of its genuineness if all the parties admit its genuineness, or do not dispute it within a reasonable time (Rule 42); or, in the case of the decision of a committee or arbitrator, if the memorandum purports to be signed by the chairman and secretary of the committee or by the arbitrator (Rule 39); or, in the case of a decision by agreement, if it purports to be signed by or on behalf of all parties to such decision (Rule 40).

If the memorandum purports to be signed by or on behalf of some only of the parties, the registrar may record it, or may, before doing so, make inquiry (Form 17) of the other parties

affected as to its genuineness (Rule 41). If any party disputes the genuineness of the memorandum, it will only be recorded by order of the County Court Judge (Rules 43, 44; Forms 18, 19).

In *Cochrane* v. *Traill* (No. 3), 1901, 38 Sc. L. R. 848, it was held by the Court of Session that a memorandum of a verbal agreement might be recorded on proof of its genuineness.

An application for an order that a memorandum be recorded or for the rectification of the register must be made in Court on notice in writing (Form 20), stating the relief or order claimed (Rule 45 (a)). The notice must be served on all the parties affected ten clear days at least before the hearing, unless leave is given for shorter notice (*Ib.* (b)). On the hearing of the application witnesses may be orally examined (*Ib.* (c)), and the Judge may make such order, including an order as to the costs of the application, or give such directions as may be just (*Ib.* (d) and (e)).

In *Marno* v. *Workman*, 1899, 34 Ir. L. T. R. 14, an application was made to record a memorandum of an agreement more than six months after the accident happened, the applicant having in the meanwhile been receiving compensation from the respondents in pursuance of the alleged agreement, but not having made any "claim for compensation" within six months of the accident as required by sect. 2 (1) of the Act. The Court of Appeal in Ireland held that the application to record the memorandum was a proceeding for the recovery of compensation under the Act within the meaning of sect. 2 (1), and was therefore out of time. In *Cochrane* v. *Traill*, 1900, 2 Fraser, 794, however, a case in the Court of Session, the Lord Justice-Clerk and Lord Low expressed the opinion that a memorandum of an agreement might be recorded, although more than six months had elapsed from the date of the accident, and there had been no claim for compensation within the six months. See also *ante*, p. 49, as to the employer being estopped by an agreement to pay compensation from setting up that the proceedings are out of time.

In the case of *Cochrane* v. *Traill* (No. 2), 1900, 3 Fraser, 27, a memorandum was subsequently sent to the sheriff-clerk for registration, and he refused to record it on the ground that its

genuineness was disputed. An application was then made to the Sheriff for a special warrant to register the memorandum. The Sheriff refused to entertain this application until the applicant had paid the expenses of the former unsuccessful action in the Court of Session, but stated a case for the opinion of the Court as to whether it was competent for him to make the payment of such expenses a condition of entertaining the application. The Court of Session held that on an application for a special warrant to register a memorandum of agreement the Sheriff is not acting as an arbitrator under the Act, and that therefore the appeal from his decision by stated case would not lie; but the Court expressed the opinion that the only question for the Sheriff on such an application was whether the agreement was genuine, and if he was satisfied of its genuineness, it was his duty to grant the warrant for registration without imposing any conditions. A certificate given under sect. 1 (4) of the Act will be recorded in the same manner as if it were a memorandum sent to the registrar to be recorded under this paragraph (Rule 48, W. C. R.).

Enforcing the memorandum.—The award or memorandum, when recorded, is enforceable as a County Court judgment. Execution (Form 23) may issue without leave, if default is made in payment of the amount awarded, or where payment is to be made by instalments, of any instalment (W. C. R. 49 (1)); provided that where such sum is not payable into Court, the party applying for execution must satisfy the registrar, by affidavit or otherwise, as to the amount in payment of which default has been made (*Ib.* (2)).

Payment may also be enforced by committal under sect. 5 of the Debtors Act, 1869, on proof of means (*Bailey* v. *Plant*, [1901] 1 K. B. 31). When this case came back to the County Court Judge, he refused to make an order for committal, on the ground that no memorandum of the award had been sent to the registrar or recorded by him, though the award itself had been so sent and recorded. On appeal, it was held that the award itself was a sufficient memorandum, and the appeal was allowed (*Bailey* v. *Plant* (No. 2), 1901, 17 T. L. R. 449). The County Court Rules for the time being in force as to the

committal of judgment debtors, and as to proceedings for the enforcement of judgments or orders of the County Court, otherwise than by execution or committal, apply, with the necessary modifications, to proceedings under this paragraph for the enforcement of any award, memorandum, or certificate (Rules 49 (a), 49 (b), W. C. R. 1900). For form of judgment summons under this paragraph, see Form 23 (a).

As to taking proceedings in any other Court on the subject-matter of an award, memorandum or certificate recorded in pursuance of this paragraph, see the note to the next paragraph.

(9) Where any matter under this Act is to be done in a County Court, or by to or before the Judge or registrar of a County Court, then, unless the contrary intention appear, the same shall, subject to Rules of Court, be done in, or by to or before the Judge or registrar of, the County Court of the district in which all the parties concerned reside, or if they reside in different districts the district in which the accident out of which the said matter arose occurred, without prejudice to any transfer in manner provided by Rules of Court.

Proceedings as to subject-matter of award or memorandum recorded in another Court.—The memorandum of an award, certificate under sect. 1 (4) of the Act, or agreement for compensation, is to be recorded in the County Court for the district in which the person entitled to the compensation resides (see paragraph 8, *ante*, p. 148). Before taking proceedings in any other Court with reference to the subject-matter of any award, memorandum, or certificate so recorded, the party desiring to take the proceedings must obtain a certified copy of such award, memorandum, or certificate, and file it in the Court in which the proceedings are to be taken, and it will then be recorded in that Court (Rule 60, W. C. R.).

Transfer of proceedings.—Where the Judge is satisfied that any matter pending in his Court can be more conveniently proceeded with in any other Court, he may order it to be transferred to such other Court (Rule 61, W. C. R.). The provisions

of Order 8, Rule 9 of the County Court Rules apply to any such transfer or application for a transfer (*Ib.*; see *post*, p. 218).

(10) The duty of a County Court Judge under this Act, or of an arbitrator appointed by him, shall, subject to Rules of Court, be part of the duties of the County Court, and the officers of the Court shall act accordingly, and Rules of Court may be made both for any purpose for which this Act authorises Rules of Court to be made, and also generally for carrying into effect this Act so far as it affects the County Court, or an arbitrator appointed by the Judge of the County Court, and proceedings in the County Court or before any such arbitrator, and such rules may, in England, be made by the five Judges of the County Courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by the Lord Chancellor, as provided by that section, shall have full effect without any further consent.

(11) No Court fee shall be payable by any party in respect of any proceeding under this Act in the County Court prior to the award.

(12) Any sum awarded as compensation shall be paid on the receipt of the person to whom it is payable under any agreement or award, and his solicitor or agent shall not be entitled to recover from him, or to claim a lien on, or deduct any amount for costs from, the said sum awarded, except such sum as may be awarded by the arbitrator or County Court Judge, on an application made by either party to determine the amount of costs to be paid to the said solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by Rules of Court.

Application to determine amount of costs.—An application for the determination of the amount of costs to be paid to the solicitor or agent under this paragraph, may be made at or immediately after the hearing of the arbitration (Rule 46 (a), W. C. R.), or at a subsequent date; but, if made at a subsequent date, it must, if the arbitration was before the County Court Judge or an arbitrator appointed by him, in every case be made to the Judge in Court, on notice in writing (Form 21) in accordance with Rule 45, and such notice must be served on the person for whom the solicitor or agent acted ten clear days at least before the hearing of the application, unless leave for shorter notice be given (*Ib.* (b), (c), and (d)).

On the hearing of the application, the Judge or arbitrator may award costs to the solicitor or agent, and may make an order declaring him to be entitled to recover such costs from the person for whom he acted, or to be entitled to a lien on, or to deduct such costs from, any sum awarded as compensation to such person, or to make such order as may be just (*Ib.* (e)). Any costs so awarded must, in default of any agreement as to the amount thereof, be taxed on such one of the scales of costs applicable to actions in the County Court as the Judge or arbitrator may direct, or in default of such direction, on the scale which would be applicable if the proceeding had been an action (*Ib.* (f)). Where the subject-matter of the arbitration is not a capital sum, the Judge or arbitrator must determine what shall be considered the amount of the subject-matter for the purpose of the allowance and taxation of the costs (*Ib.* (g)).

Proceedings on an award of costs.—Where costs have been awarded as above mentioned, the registrar will on application tax them (Rule 47 (a)). The solicitor or agent may then obtain from the registrar a copy of the order, and a memorandum of the amount allowed on taxation, for service on the party liable to pay the compensation (*Ib.* (b)); and a memorandum of the order and amount may be recorded in the register in which the award or memorandum under which the compensation is payable is recorded (*Ib.* (c)).

The party liable to pay the compensation must on demand

pay to the solicitor or agent the amount to which he is entitled, but so that he is not liable to pay any amount in excess of the compensation, nor to pay by any other instalments than those by which he is liable to pay the compensation (*Ib.* (d)). If the party liable to pay the compensation fails on demand to pay any amount which he is liable to pay to the solicitor or agent, the Judge may, on application made to him on notice to such party in accordance with Rule 45, and on proof of the order having been served on and demand for payment made to him, order him to pay such sum; and in default of payment, may order execution to issue to levy the amount (*Ib.* (e)). Payment made by or execution levied on such party is, to the amount paid or levied, a valid discharge to him as against the party entitled to the compensation (*Ib.* (f)).

Where the sum awarded as compensation has been paid into Court, the amount to which the solicitor or agent is entitled will be paid to him out of such sum (*Ib.* (g)).

(13) The Secretary of State may appoint legally qualified medical practitioners for the purpose of this Act, and any committee, arbitrator, or Judge, may, subject to regulations made by the Secretary of State and the Treasury, appoint any such practitioner to report on any matter which seems material to any question arising in the arbitration; and the expense of any such medical practitioner shall, subject to Treasury regulations, be paid out of moneys to be provided by Parliament.

The regulations made by the Secretary of State and the Treasury as to the appointment and payment of medical referees are printed in Appendix C., *post*, p. 261. These regulations, so far as they affect the County Court or an arbitrator appointed by the County Court Judge, have effect as Rules of Court (Rule 25 (2), W. C. R.).

Before making any reference, the committee, arbitrator, or County Court Judge must be satisfied, after hearing all the evidence tendered by either side, that such evidence is either

conflicting or insufficient, and that it is desirable to obtain a report from a medical referee (Reg. 2).

The form and mode of reference are prescribed by Regulations 3—7, and Forms A and B in the Schedule to the Regulations. The workman may be ordered to submit himself for examination, and if he is in a fit condition to travel, may be directed to attend at such time and place as the referee may fix (Reg. 4; Rule 25 (3), W. C. R.); and any reasonable travelling expenses incurred by him in attending the examination may be allowed as costs in the arbitration (Rule 33 (5) W. C. R.). When the reference is made by a committee or an arbitrator agreed on by the parties, it must be forwarded to the registrar of the County Court of the district in which the case arises (Reg. 7).

As to the selection of the medical referee, see Regs. 8—10; and as to the duties of the registrar with regard to references and reports, see Regs. 11—14. All references must be forwarded by the registrar, who is required to keep a record thereof, and to send such record to the Secretary of State at the end of each quarter (Regs. 11 and 12). The report of the medical referee must be given in writing, and forwarded to the registrar from whom the reference was received (Reg. 17). The committee, arbitrator, or County Court Judge may remit the report for a further statement by the medical referee (Reg. 18); and in any case of special difficulty, the County Court Judge, or an arbitrator appointed by him, may require the personal attendance of the medical referee at the arbitration (Reg. 19).

Regulation 20 fixes the scale of fees to be paid to medical referees. In the case of a reference under the Regulations these fees are paid by the Treasury.

(14) In the application of this schedule to Scotland—

(a) "Sheriff" shall be substituted for "County Court Judge," "Sheriff Court" for "County Court," "action" for "plaint," "sheriff clerk" for "registrar of the County Court," and "Act of Sederunt" for "Rules of Court":

(b) Any award or agreement as to compensation

under this Act may be competently recorded for execution in the books of council and session or Sheriff Court books, and shall be enforceable in like manner as a recorded decree arbitral:

(c) Any application to the Sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by the fifty-second section of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorised in writing to appear for them and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by Act of Sederunt to require the Sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the Court of Session, who may hear and determine the same finally, and remit to the Sheriff with instruction as to the judgment to be pronounced.

In *The United Collieries* v. *Gavin*, 1899, 2 Fraser, 60, the Court of Session decided that it was not competent for the Sheriff, acting as arbitrator under the Act, to pronounce a decree by default for the amount of compensation claimed, the respondents not appearing on the day fixed for the hearing of the arbitration. In such a case, it is the duty of the Sheriff to hear the evidence, and inform himself of the facts as far as possible, and then proceed to ascertain and settle the amount of compensation payable.

If the Sheriff refuses, on the application of any party, to state a case on any question of law decided by him, he may be ordered by the Court of Session to state a case (*Hobbs* v. *Bradley*, 1900, 2 Fraser, 744). In this case the Sheriff had refused to state a case on the question whether a building which was being painted was being constructed within the

meaning of the Act, on the ground that the question was one of fact.

The Court of Session has power to send back a stated case for amendment in order to have a clearer statement on the question submitted ; but not to send it back for a statement on some other question of law which was not raised before the Sheriff nor decided by him (*Rae* v. *Fraser*, 1899, 1 Fraser, 1017).

Where a case stated under this paragraph was not in proper form, and was remitted to the Sheriff for amendment, the Court refused to allow the respondent in the appeal any costs, and decided that neither party was entitled to costs in the appeal (*Murnin* v. *Calderwood*, 1899, 1 Fraser, 634).

There is no appeal from a decision of the Court of Session to the House of Lords on a case stated under this paragraph (*Osborne* v. *Barclay*, [1901] A. C. 269, *sub nom. M'Kinnon* v. *Barclay*, 38 Sc. L. R. 611).

(15) Paragraphs four and seven of this schedule shall not apply to Scotland.

(16) In the application of this schedule to Ireland the expression "County Court Judge" shall include the the recorder of any city or town.

THE WORKMEN'S COMPENSATION ACT, 1900.

(63 & 64 Vict. c. 22.)

An Act to extend the benefits of the Workmen's Compensation Act, 1897, to Workmen in Agriculture.

[30th July, 1900.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:—

1.—*Application of* 60 *&* 61 *Vict. c.* 37, *to agricultural work.*—(1) From and after the commencement of this Act, the Workmen's Compensation Act, 1897, shall apply to the employment of workmen in agriculture by any employer who habitually employs one or more workmen in such employment.

(2) Where any such employer agrees with a contractor for the execution by or under that contractor of any work in agriculture, section four of the Workmen's Compensation Act, 1897, shall apply in respect of any workman employed in such work as if that employer were an undertaker within the meaning of that Act.

Provided that, where the contractor provides and uses machinery driven by mechanical power for the purpose of threshing, ploughing, or other agricultural work, he, and he alone, shall be liable under this Act to pay compensation to any workman employed by him on such work.

(3) Where any workman is employed by the same employer mainly in agricultural but partly or occasionally in other work, this Act shall apply also to the employment of the workman in such other work.

The expression "agriculture" includes horticulture, forestry, and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit and vegetables.

2. *Short title.*—This Act may be cited as the Workmen's Compensation Act, 1900, and shall be read as one with the Workmen's Compensation Act, 1897, and that Act and this Act may be cited together as the Workmen's Compensation Acts, 1897 and 1900.

3. *Commencement of Act.*—This Act shall come into operation on the first day of July, one thousand nine hundred and one.

Employment in agriculture.—The effect of sect. 1 (1) appears to be that where an employer habitually employs one or more workmen in agriculture, as defined by sub-sect. 3, he is liable to pay compensation under the Act of 1897, in respect of injuries sustained by any workman in the course of his employment by him on agricultural work. It does not appear to be necessary that the workman sustaining the injury should be habitually employed by the employer, either in agricultural or any other kind of work, so long as the employer habitually employs one or more workmen in agriculture. Nor is it necessary that the usual employment of the workman should be in agriculture. A mere casual labourer employed for the day in any kind of work included in the expression "agriculture" as defined by the third sub-section appears to be entitled to the benefits of the Act, if his employer is in the habit of employing one or more workmen in any of such kinds of work, though

such labourer's usual employment has no connection with agriculture. The definition of agriculture is a very wide one; and the Act is not confined to employers engaged in agriculture as a trade or business, or for the purpose of gain, but extends, for instance, to every person who habitually employs a gardener for the cultivation of a garden attached to a private residence.

Sub-contracting.—The effect of sub-sect. (2) appears to be as follows:—

1. Where an employer who habitually employs one or more workmen in agriculture agrees with a contractor for the execution by or under that contractor of any work in agriculture, and the contractor does not provide and use machinery driven by mechanical power for the purpose of the work, the employer is liable to pay compensation under the Act of 1897 in respect of any personal injury suffered by a workman employed by the contractor in the same manner as if such workman had been employed immediately by himself, whether the contractor is liable to pay such compensation or not; and is also liable to pay any damages for which the contractor may be liable in respect of the injury either at common law or under the Employers' Liability Act. The question whether the contractor is liable to pay compensation under the Workmen's Compensation Acts in such a case depends upon whether he habitually employs one or more workmen in agriculture. Where the contractor would have been liable to pay compensation or damages either under or independently of the Acts, the employer is entitled to be indemnified by him (see Act of 1897, s. 4).

2. Where the contractor does provide and use machinery driven by mechanical power for the purpose of the work, the employer is not liable to pay compensation under the Acts for injury to any workman employed by the contractor on the work for which the machinery is used. The contractor alone is liable to pay such compensation. It is not clear whether this liability is imposed on the contractor where he does not habitually employ one or more workmen in agriculture, but, having regard to the words "he, and he alone, shall be liable, &c.,"

in the proviso, that appears to have been the intention of the statute.

Employment partly in other work.—Sub-section (3) applies only where the workman is employed mainly in agricultural work by the employer in whose employment the injury is sustained. It is not, apparently, necessary that the "other work" should be in the locality of, or in any way connected with, the agricultural work. Nor does it appear to be necessary that the workman should be in the exclusive employment of the employer against whom compensation is claimed.

APPENDIX A.

STATUTORY RULES AND ORDERS UNDER THE WORKMEN'S COMPENSATION ACTS, 1897 AND 1900.

THE WORKMEN'S COMPENSATION RULES, 1898. DATED MAY 27, 1898.

Explanatory Memorandum.

The accompanying Rules and Forms have been framed under paragraph 10 of the second schedule to the Act, which provides that Rules of Court may be made for any purpose for which the Act authorises Rules of Court to be made, and also generally for carrying the Act into effect so far as it affects the County Court, or an arbitrator appointed by the judge, and proceedings in the County Court or before such arbitrator, and that such Rules may in England be made by the County Court Rules Committee, and, when allowed by the Lord Chancellor, shall have full effect without any further consent.

The following provisions of the Act have to be considered:—

Act.

Sect. 1, *sub-sect.* 3. Questions to be settled by arbitration.
Sect. 1, *sub-sect.* 4. Certificate of Court in which an action is brought to have effect of award.

Sect. 2. Notice of accident, and claim for compensation.
Sect. 4. Employer when entitled to be indemnified by contractor.
Sect. 5. Workman entitled to first charge on sum payable by insurers to employer in respect of compensation payable by him, where the employer becomes bankrupt, &c.; payment of such sum into Court.
Sect. 6. Employer when entitled to be indemnified by stranger.

Schedule 1.

Par. 1 (*a*) (ii.) Settlement by arbitration of sum payable to dependants of deceased workman.
Par. 3. Refusal of workman to submit to examination.
Par. 5. Arbitration as to who are dependants, and amount payable to each dependant.
Par. 6. Investment and application of compensation allotted to dependants.
Par. 9. Payment out of Court of money invested in name of registrar.
Par. 11. Suspension of payments on refusal to submit to examination.
Par. 12. Review of weekly payments.
Par. 13. Redemption of weekly payments; investment and application of redemption money.

Schedule 2.

Par. 1. Reference to arbitration by committee representative of employer and workmen.
Par. 2. Settlement of matters—
by judge, according to procedure prescribed by Rules; or, if Lord Chancellor so authorises, according to like procedure, by arbitrator appointed by judge.
Par. 3. Arbitrator so appointed to have powers of judge.
Par. 4. Arbitration Act, 1889, not to apply:
Arbitrator may submit question of law for decision of judge:
Decision of judge on question of law submitted,

or where he settles matter, to be final, unless either party appeals under Rules of Supreme Court.

Power of judge or arbitrator to procure attendance of witnesses and production of documents.

Par. 5. Rules may provide for appearance of parties in *any* arbitration.

Par. 6. Costs before arbitrator or in Court not to exceed limit prescribed by Rules, and to be taxed in manner prescribed.

Par. 8. Memorandum of decision of committee, arbitrator, or by agreement to be sent, as prescribed by Rules, to registrar of County Court, and to be registered there and enforceable as a judgment. Power of judge to rectify register.

Par. 9. What Court to have jurisdiction :

Transfer of matters as prescribed by Rules.

Par. 10. Duties of judge or arbitrator to be part of duties of Court :

General power of making Rules.

Par. 12. No deduction from or lien on compensation for costs of solicitor or agent, or right to recover such costs, except as awarded by arbitrator or judge on application by either party, subject to taxation and scale prescribed by Rules.

Par. 13. Appointment of medical referees to report on matters arising in arbitrations.

It is apprehended that the Rules Committee have no power to make Rules as to the procedure before a committee or an arbitrator agreed upon by the parties ; but paragraphs 4 to 6, 8, 12 and 13 of Schedule 2 appear to apply to such an arbitrator as well as to one appointed by the judge.

The scheme of the Rules is as follows :—

	Rules.
1. Preliminary. Effect, construction, &c. of Rules .	1
2. Parties to arbitration	2 to 7

	Rules.
3. Application to Court for settlement of matters by arbitration	8 to 12
4. Proceedings before judge, including service on respondents, stay of numerous arbitrations to abide event of selected case, notice of defence by respondents, submission by respondents to award, payment into Court, and claim to indemnity under Section 4 or Section 6, or otherwise	13–24
4*a*. Appointment of medical referees ; Schedule 2, par. 13	25
5. Award	26
6. Appointment of arbitrator by judge... ...	27
7. Proceedings before arbitrator...	28, 29
8. Submission of question of law by arbitrator to judge	30
9. Subsequent arbitration in matter settled by arbitrator	31
10. Appearance of parties ; Schedule 2, par. 5 ...	32
11. Costs ; Schedule 2, par. 6	33, 34
12. Duty of judge as to taking notes	35
13. Appeals	36, 37
14. Registration of Memorandum under Schedule 2, par. 8. Rectification of register ...	38–45
15. Costs of solicitor or agent under Schedule 2, par. 12	46, 47
16. Certificate under Section 1, sub-section 4 ...	48
17. Execution	49
18. Suspension of proceedings or weekly payments on refusal of injured workman to submit to medical examination ; Schedule 1, pars. 3, 11	50
19. Applications against insurers under Section 5	51–58
20. Application of money ordered to be invested.	59
21. Transfer of proceedings	60, 61
22. Filing and service of documents and notices .	62
23. Procedure generally	63, 64
24. Record of proceedings. Special register ...	65

Rules.
25. Matters, how distinguished 66
26. Forms 67

The Rules are intended to apply, as far as possible, the procedure in County Court actions to arbitrations under the Act, with such modifications as seem to be necessary.

Dealing with the Rules in detail :—

Rule 1. Provides for the title, commencement and construction of the Rules.

Rule 2. Prescribes who are to be parties to an application for arbitration, with a special provision as to cases where both the undertakers and a contractor may be liable under section 4.

Rule 3. Provides for the joinder of applicants in accordance with Order III., Rule 1*a*, of the County Court Rules (December, 1896).

Rules 4, 5. Provide for applications on behalf of dependants, following the principle of Lord Campbell's Act (The Fatal Accidents Act, 1846, 9 & 10 Vict. c. 93, and amending Act, 27 & 28 Vict. c. 95).

Rule 6. Provides for applications where deceased workman leaves no dependants. Schedule 1, par. (1) (*a*) (iii.).

Rule 7. Provides for persons under disability, partners, and the representation of numerous parties having the same interest.

Rules 8–12. Provide that application for arbitration shall be made by filing a request, following the procedure on an appeal under the Agricultural Holdings Act, or a petition in equity, rather than that on the commencement of an action; such request to contain particulars of the claim. Full forms are given in the Appendix.

Rule 13. Provides for fixing a day and place for the arbitration, following, as to the place, the Admiralty Rules in force in the County Courts. Order XXXIXB., Rules 1, 2.

Rule 14. Provides for notice to the applicant and respondents.

Rule 15. Provides for service on the respondents, either by a bailiff or by the applicant or his solicitor, and adopts the provisions of section 2 of the Act as to the service of notice of an accident by registered post.

Rule 16. Provides for the stay of numerous applications for arbitration on claims arising out of the same circumstances, on the employer undertaking to be bound, so far as liability to pay compensation is concerned, by the award in a selected case. (*See* County Court Rules, Order VIII., Rules 2–6.)

Rule 17. Provides for the respondent filing an answer to the claim, and that he shall, subject to such answer, be deemed to admit the correctness of the applicant's particulars, and his own liability to make compensation. (*See* County Court Rules, Order X., Rules 9, 10.)

Rule 18. Provides for a respondent submitting to an award, or paying money into Court, and for the proceedings consequent thereon.

Rules 19-23. Deal with claims to indemnity under section 4 or section 6, or otherwise.

The question has been considered, to what extent the third party procedure under Order XI. can be applied in cases in which an employer claims under either of these sections to be entitled to indemnity against a sub-contractor or a stranger; and the Rules are framed on the assumption that it can be only applied for the purpose of providing that a sub-contractor (unless he is himself liable as an employer under the Act), or a stranger, shall not be entitled in any future proceeding to dispute the validity of an award against the employer.

An arbitration under the Act will be a very different thing from an action: and the question whether such a sub-contractor or a stranger is liable to the workman, and is consequently liable under the sections referred to to

indemnify the employer, is a very different one from the question whether the employer is liable to the workman.

For instance, such a sub-contractor is apparently liable under section 4 only in case of personal negligence or wilful act, or under the Employers Liability Act: while a stranger would be liable under section 6 only in case of wilful act or negligence: and a sub-contractor sued under the Employers Liability Act would be entitled to any defence open to him under that Act, while a stranger would be entitled to any defence open to him at common law, such defences including contributory negligence on the part of the workman, a very much wider term than the "serious and wilful misconduct" on which alone an employer can rely under section 1, sub-sect. 2 (*c*); and it is difficult to see how a sub-contractor or stranger can be compelled to submit these questions to the judge or arbitrator, and deprived of his right to have them decided by a jury, or what power the judge or arbitrator has to decide them at or after the arbitration.

The third party procedure is for these reasons expressly limited so as to make it bind the third party only as to the validity of the award against the employer in respect to matters which under the Act the judge or arbitrator has power to decide as between the workman and the employer, and not as to the third party's liability to indemnify the employer.

There seems, however, to be no reason why the judge or arbitrator should not, if the third party and the respondent consent, decide the question of the third party's liability; and provision is therefore made by Rule 22 for the decision of this question by consent.

Rule 23. Provides for claims to indemnity as between respondents, and makes provision for the judge or arbitrator giving effect, independently of any consent to his so doing, to the right of indemnity given by section 4 to an employer who is called upon to pay compensation to a workman in the service of a

contractor, in cases where the contractor is joined as a respondent, and it is decided in the arbitration that he is liable under the Act to pay compensation to the workman. In such a case there can be no further question to be tried as between the employer and the contractor as to the right to indemnity, which is expressly given by the Statute; and there can be no difficulty in the judge or arbitrator giving effect to such right.

Rule 24. Provides that, subject to the special provisions of the Rules, the procedure in an arbitration shall be the same as in an ordinary County Court action tried by the judge without a jury.

Rule 25. Deals with the appointment of medical referees under paragraph 13 of Schedule 2. Under this paragraph, which applies to the whole of the kingdom, and to all arbitrations, whether before committees, agreed arbitrators, judges, or arbitrators appointed by them, a committee, arbitrator, or judge may appoint a medical referee "subject to regulations made by the Secretary of State and the Treasury." Rule 25 provides that medical referees may be appointed by a judge or arbitrator subject to and in accordance with such regulations, and that such regulations, so far as they relate to proceedings in the County Court, or before appointed arbitrators, shall be deemed to be Rules of Court, and shall have effect accordingly.

Rule 26. Provides for the award, and embodies section 7 (*c*) of the Arbitration Act, 1889, as to the correction of errors. Forms of award are given in the Appendix.

Rule 27. Deals with the appointment of an arbitrator by the judge.

Schedule 2, *par.* 2 of the Act, provides that matters referred to the judge shall, if the Lord Chancellor so authorises, be settled by an arbitrator appointed by the judge. The paragraph does not indicate the circumstances

in which such authorisation may be given; but it is presumed that the object of the enactment is to enable the Lord Chancellor to grant such authority in cases in which the time of the judge is so fully occupied that he cannot deal with arbitrations himself.

In framing the rule it has been assumed that in Courts where the business is heavy and arbitrations are likely to be numerous, the Lord Chancellor may think it proper to grant a general authority to refer matters under the Act to an arbitrator; and that in other cases he will grant special authorities from time to time as occasion may require.

The Act does not require the arbitrator to possess any special qualifications, and it is therefore provided that any appointment shall be subject to the approval of the Lord Chancellor.

Rules 28 *and* 29. Apply to proceedings before an arbitrator the provisions of the Rules as to proceedings before the judge, with a proviso that where the parties agree, and application is made for an award by consent, such award may be made by the judge, and thereupon the functions of the arbitrator shall cease.

Rule 30. Provides for the statement and hearing of questions of law submitted by an arbitrator to the judge under Schedule 2, paragraph 4. This paragraph seems to apply to an arbitrator selected by the parties as well as to an arbitrator appointed by the judge, and the Rules provide that the submission shall be by special case.

Rule 30 (5). Empowers the judge, if his decision disposes of the whole matter, to make an award himself instead of remitting the case to the arbitrator.

Rule 30 (7). Deals with the costs of a special case.

Rule 31. Provides that where a matter has been settled by an arbitrator, any subsequent arbitration in the same matter shall, as a rule, be referred to the same arbitrator.

Rule 32. Provides for the appearance of parties under

paragraph 5 of Schedule 2. It adopts generally the provisions of section 72 of the County Courts Act, and makes special provision for appearance, by leave of the judge or arbitrator, by an officer of a trade union or other society to which the workman may belong. The rule follows section 72 of the County Courts Act as to costs.

Rule 33. Provides for costs awarded by a judge or an arbitrator being taxed according to the County Court scales of costs: the scale to be determined, where the subject of the award is a weekly payment, by the judge or arbitrator. Paragraph (3) provides that any reasonable offer of compensation may be taken into consideration when dealing with costs; and paragraphs (4) and (5) provide that costs incurred by a workman in submitting to examination by a medical referee under Schedule 1, paragraph 3, or if ordered to so submit himself on a reference under Schedule 2, paragraph 13, may be allowed as costs in the arbitration.

Rule 34. Provides for the taxation by the registrar of costs awarded by an arbitrator agreed on by the parties.

Rule 35. Applies to proceedings under the Act the provisions of sections 120 and 121 of the County Courts Act as to taking and furnishing copies of notes of question of law raised.

Rule 36. Provides for appeals, as to which some Rule of the Supreme Court be required [*sic*] (*see* Schedule 2, par. 4).

Rule 37. Provides for the procedure after an appeal has been decided.

Rules 38 *to* 44. Provide for the drawing up and transmission to the registrar of the memorandum referred to in paragraph 8 of Schedule 2: for the authentication of such memorandum: for inquiries by the registrar as to its genuineness: and for the proceedings to be taken to procure registration where the genuineness of a memorandum is disputed.

Rule 45. Provides how such proceedings shall be taken, and for proceedings for the rectification of the register.

Rules 46 *and* 47. Provide for the procedure on an application under paragraph 12 of Schedule 2 to determine the amount of costs payable to the solicitor or agent of a person to whom compensation is awarded, and for the registration and enforcement of any order made in favour of such solicitor or agent.

Rule 48. Provides a form of certificate where a County Court proceeds under sub-section 4 of section 1.

Rule 49. Provides for execution on an award, memorandum, or certificate. Special provision seems necessary as to this, having regard to the fact that the payment ordered may be a weekly one, and may be payable to the workman direct, and not into Court.

Rule 50. Provides for applications for the suspension of proceedings or payments where a workman refuses to submit to medical examination. Schedule 1, paragraphs 3, 11.

Rules 51 *to* 57. Provide for applications for the enforcement of the charge given by Section 5 on sums payable by insurers in the event of the bankruptcy, &c., of an employer. They follow in the main the provisions of Order XXVIA. as to garnishee proceedings. Power is given by Rule 54 to direct that notice of such proceedings shall be given to the employer or his trustee, &c.

Rule 55. Provides that an insurer who is liable to pay a weekly sum to an employer may be ordered to pay such sum direct to the party entitled to compensation instead of paying into Court; and that in such case the insurers shall have the same right as the employer as to the review or redemption of the weekly payment.

Rule 57. It may well happen that an employer may be liable to pay compensation to several persons, and may be entitled to one sum from insurers in respect

of such liability, and that such sum may be insufficient to satisfy the whole amounts payable as compensation. This rule therefore gives the Court power to apportion the sum payable by the insurers among the persons entitled to compensation, and for the purposes of such apportionment to order any weekly payment to be redeemed, and makes provision for the transfer and consolidation of proceedings for this purpose.

Rule 58. Provides for discovery in aid of an application against insurers under section 5, in accordance with Order XXV., Rule 52.

Rule 59. Deals with the application of money ordered to be invested, and applies Rules 21 and 22 of Order IX.

Rule 60. The provisions of paragraph 8 of the Second Schedule, as to the Court in which a memorandum is to be recorded, and those of paragraph 9, as to the Court in which proceedings are to be taken, are not identical; and it may well happen that where a memorandum has been recorded under paragraph 8, and it becomes necessary to take subsequent proceedings with reference to the subject-matter of such memorandum, such proceedings may have under paragraph 9 to be taken in some other Court than that in which the memorandum has been recorded. This rule, therefore, provides that in such cases a certified copy of the memorandum shall be filed and recorded in the Court in which the subsequent proceedings are to be taken.

Rule 61. Provides generally for the transfer of proceedings from one Court to another. *See* Schedule 2, paragraph 9.

Rule 62. Provides generally for the filing and service of documents and notices, and provides that service may in any case be effected by the party or his solicitor, and that such service may be effected by registered post.

Rule 63. Applies the provisions of the County Court Rules as to service, &c., where parties act by solicitors,

and as to substituted service and notice in lieu of service.

Rule 64. Provides for the application of County Court procedure in cases not specially provided for.

Rule 65. Provides for the record of all proceedings in the Court books and in the special register.

Paragraph (*f*) provides for the recording of certificates given under sub-section 4 of section 1, either by the Court in which the register is kept or by any other Court.

Rule 66. Provides how matters under the Act shall be distinguished.

Rule 67. Provides for forms, an Appendix of which is annexed to the Rules.

May, 1898.

THE WORKMEN'S COMPENSATION RULES, 1900.

Explanatory Memorandum.

The rules and forms of procedure under the Workmen's Compensation Act, 1897, framed before the Act had come into operation, dealt only with what was expected to be and has proved to be the ordinary case, viz., that in which the person claiming compensation applies for the settlement of a dispute by arbitration; and they did not expressly deal with the rarer case of the person from whom compensation is claimed making an application for arbitration.

In *Powell* v. *Main Colliery Co.*, L. R. 1900, 1 Q. B. 145, the question was much discussed whether the employer could initiate proceedings. The actual point for decision in that case was as to the meaning of the words "claim for compensation" in sub-section 1 of section 2 of the Act; but the question as to whether the employer could initiate proceedings was fully discussed in the argument, and in the result the Court of Appeal was divided in opinion, the

majority holding that he could not, and Romer, L.J., being of opinion that he could.

That case was taken to the House of Lords, who differed from the Court of Appeal as to the meaning of the words "claim for compensation," and in his speech to the House the Lord Chancellor said that when once the claim for compensation was made the matter was remitted to arbitration, and that he did not agree with the argument that the employer could not appoint an arbitrator to have the matter settled. [L. R., 1900, A. C., p. 366.] The other Law Lords expressed the opinion that the employer could initiate proceedings.

The accompanying Rules have been framed in accordance with the views so expressed, and provide for the procedure on an application by an employer for arbitration.

Rule 1. Provides for the filing of a request for arbitration and particulars by an employer on whom a claim for compensation has been made; and requires him to state whether he admits or denies liability, and if he denies, to state the grounds on which he relies. It has not been thought necessary to frame a form of request; the present forms of request and answer furnish materials from which a request could be framed applicable to the circumstances of the case.

This request will in due course be served on the persons claiming compensation, who will be called upon to put in an answer, and *Rules* 2 and 3 provide for notice to the respondents and an answer by them; but provide that failure to put in an answer shall not operate as an admission of the truth of the employer's statement of the grounds on which he denies liability.

Paragraph (2) of Rule 2 alters the form of answer in accordance with the alteration made by the Workmen's Compensation Rules of 1899, which requires an answer to be filed ten instead of five days before the hearing.

Rule 4. Provides for the employer who applies for arbitration submitting to an award or paying money into Court.

Rule 5. Provides for his serving a third party notice on any person from whom he claims indemnity.

Rule 6. Provides that the burden of proof as to matters not admitted shall be the same, whichever party is the applicant.

Rule 7. Applies to arbitrations, the provisions of Order 50A., Rule 7 of the County Court Rules, which empowers the judge to allow certain items of cost in (*inter alia*) actions under the Employers Liability Act.

Rules 8 and 9. The Act and rules provide that an award, memorandum, or certificate may be enforced as a County Court judgment.

Rule 49 of the Rules provides for execution, but no provision is made for other modes of enforcing awards.

A judgment of a County Court may be enforced by (1) judgment summons, (2) attachment of debts, and (3) equitable execution, as well as by execution against goods.

There has been some difference of opinion among the judges of the County Courts as to whether an award can be enforced by judgment summons; but the Court of Appeal has now decided that an award can be so enforced. (*Bailey* v. *Plant*, "Times," November 16, 1900.)

Rule 49*a* accordingly deals with proceedings under the Debtors' Act, 1869, s. 5, and applies the County Court Rules as to commitment, but negatives the application to awards, &c., of the power conferred by the Debtors' Act to order a sum due under a judgment or order to be paid by instalments, and provides that the Court shall not alter the terms of future payment prescribed by an award, &c., otherwise than by consent or under paragraph 12 of Schedule 2.

Rule 49*b*. Applies in general terms the County Court procedure as to enforcement of judgments by proceedings other than execution or committal to the enforcement of awards, &c.

December, 1900.

THE WORKMEN'S COMPENSATION RULES, 1898. DATED MAY 27TH, 1898.

AS AMENDED BY THE RULES DATED SEPTEMBER 1ST, 1899, AND NOVEMBER 27TH, 1900.

NOTE.—The amendments made by the Rules of 1899 and 1900 are in italics.

Preliminary.

Effect, short title, commencement, and construction of Rules, 60 & 61 Vict. c. 37.

1.—(1.) The following Rules shall have effect under the Workmen's Compensation Act, 1897 (in these Rules referred to as the Act), with reference to any matter or proceeding for the regulation of which Rules of Court may be made under the Act, and generally for carrying the Act into effect so far as it affects the County Court or an arbitrator appointed by the judge of the County Court, and proceedings in the County Court or before any such arbitrator.

(2.) These Rules may be cited as the Workmen's Compensation Rules, 1898, and shall come into operation on the first day of July one thousand eight hundred and ninety-eight.

52 & 53 Vict. c. 63.

(3.) The Interpretation Act, 1889, shall apply for the purpose of the interpretation of these Rules as it applies for the purpose of the interpretation of an Act of Parliament.

(4.) These Rules shall also be read and construed with the County Court Rules, 1889, and the County Court Rules of subsequent date amending the same; and any Order and Rule referred to by number in these Rules shall mean the Order and Rule so numbered in the County Court Rules, 1889, or in any County Court Rules of subsequent date, as the case may be.

Parties to Arbitration before Judge or Arbitrator appointed by Judge.

Parties to arbitration. [*Conf.* Order XL. Rule 1. Order XIV Rule 2.]

2.—(1.) When application is made for the settlement by the judge, or by an arbitrator appointed by the judge, of any matter which under the Act is to be settled by arbitration, the party making such application shall be called "the applicant"; and, subject to these rules, all other persons whose presence at the arbitration may be necessary to enable the judge or arbitrator effectively and completely to adjudicate upon and settle all the questions involved shall be made parties to the application, and shall be called "the respondents."

(2.) In any case in which both the undertakers as defined by the Act and a contractor with them are alleged to be liable to pay compensation under the Act, the applicant may at his option make both the undertakers and the contractor, or either of them, respondents.

Joinder of applicants. [*Conf.* Order III. Rule 1*a* (Rule 1 of December, 1896).] Order XLIV. Rules, 18, 19.

3. More persons than one may be joined as applicants in one arbitration, in any case in which such persons might be joined in one action as plaintiffs under Order III. Rule 1*a*, of the County Court Rules (Rule 1 of the County Court Rules, December, 1896); and that rule, and Rules 18 and 19 of Order XLIV., shall, with the necessary modifications, apply to any such arbitration.

NOTE.—The rules referred to are as follows:—

[Order III., Rule 1*a*.]

1*a*. All persons may be joined in one action as plaintiffs in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, where, if such persons brought separate actions, any common question of law or fact would arise: Provided that if upon the application of any defendant it shall appear that such joinder may embarrass or delay the trial, the judge may order separate trials, or make such other order as may be expedient. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to any extra costs occasioned by so joining any

person who shall not be found entitled to relief, unless the Court in disposing of the costs of the action shall otherwise direct. NOTE.

18. Where two or more persons are joined as plaintiffs under Order III. Rule 1, and the negligence, act, or omission which is the cause of action shall be proved, the judgment shall be for all the plaintiffs, but the amount of the sum so awarded for damages and the costs ordered to be paid to each such plaintiff shall be found and set forth in the judgment, and the amount of costs awarded in the action shall be ordered to be paid to such person and in such manner as the Court may think fit. [Order XLIV. Rule 18.]

19. Should the defendant fail to pay the several amounts of compensation and the costs awarded in the action, execution against his goods may issue as in an ordinary action, and should the proceeds of the execution be insufficient, after deducting all costs, to pay the whole of the amounts awarded, a dividend shall be paid to each plaintiff, calculated upon the proportion of the amount which shall have been awarded to the respective plaintiffs to the total amount realised after the deduction of all the costs of the action as aforesaid. [Order XLIV. Rule 19.]

Application by dependants. [*Conf.* 9 & 10 Vict. c. 93. 27 & 28 Vict. c. 95.]

4.—(1.) An application on behalf of the dependants of a deceased workman for the settlement by arbitration of the amount payable as compensation to such dependants shall be made by the legal personal representative, if any, of the deceased workman on behalf of such dependants, and such legal personal representative shall file, as part of the particulars hereinafter mentioned, particulars as to the dependants on whose behalf such application is made.

(2.) If there is no such legal personal representative, the application may be made by the dependants themselves.

(3.) Provided, that if there is any conflict of interest between the dependants themselves, the application may be made by such legal personal representative on behalf of some only of such dependants, or if there is no such legal personal representative the application may be made by some only of such dependants, the other dependants in either case being named as respondents.

(4.) In the construction of this rule the term "dependants" shall include persons who claim to be dependants, but as to whose claim to rank as dependants any question arises.

Application by dependants under

5.—(1.) In any case in which the amount payable as compensation to the dependants of a deceased workman

Act, Sched. 1, par. 5, where amount of compensation agreed or ascertained.

has been agreed upon or ascertained, but any question arises as to who are dependants, or as to the amount payable to each dependant, an application for the settlement of such question by arbitration may be made either by the legal personal representative (if any) of the deceased workman on behalf of the dependants or any of them, or, if there is no legal personal representative, by such dependants or any of them, against the other dependants, and the persons claiming to be dependants, but as to whose claim to rank as such a question arises; or such application may be made by the persons claiming to be dependants, but as to whose claim to rank as such a question arises, or any of them, against the legal personal representative (if any) of the deceased workman, and the dependants, and such of the persons claiming to be dependants as are not applicants.

(2.) In any such case, if the employer has paid the agreed or ascertained amount of compensation, it shall not be necessary to make him a respondent, but if such compensation or any part thereof is still in his hands he shall be made a respondent.

(3.) In any such case the employer, if made a respondent, may pay the amount of compensation in his hands into court, to be dealt with as the judge or arbitrator shall direct, and thereupon further proceedings against him shall be stayed.

Parties arbitration as to sum payable for medical attendance and burial. Act, Sched. 1, par. 1 (*a*) (iii)

6.—(1.) An application for the settlement by arbitration of the sum payable in respect of medical attendance on and the burial of a deceased workman who leaves no dependants shall be made by the legal personal representative, if any, of the deceased workman. If there is no such legal personal representative, the application may be made by any person to whom any such expenses are due. In the latter case any other person known to the applicant as a person to whom any such expenses are due shall be joined in the application either as applicant or respondent.

Apportionment of such sum.

(2.) In any case in which application is made for the

settlement by arbitration of such amount, the amount awarded, if insufficient for the payment of such expenses in full, shall be apportioned between the persons to whom such expenses are due in such manner as the judge or arbitrator shall direct.

Parties under disability and partners; representation of parties having the same interest. [Order III. Rules 7, 8, &c.]

7. The provisions of Rules 7 and 8 of Order III. as to parties suing or defending on behalf of other persons having the same interest, and the provisions of the County Court Rules as to persons under disability and partners suing and being sued, shall, with the necessary modifications, apply to proceedings by way of arbitration under the Act.

NOTE.—The rules referred to are as follows:—

[Order III. Rule 7.]

7. Where there are numerous persons having the same interest in one action or matter, one or more of such persons may sue or be sued, or may be authorised, at or before the trial, by the judge or registrar, to defend in such action or matter, on behalf or for the benefit of all parties so interested.

[Order III. Rule 8.]

8. Where a defendant desires to defend on behalf or for the benefit of others having the same interest, he shall within two clear days of the date of service of the summons on him give notice to the plaintiff of his intention to apply, upon a day and hour to be named in such notice, to the registrar for leave so to defend, and shall file an affidavit of the facts upon which he relies to obtain such leave, together with the names, addresses, and occupations of such persons, and the registrar may thereupon make an order for the defendant so to defend, and shall add the names to that of the defendant in the plaint and minute-book, and a copy of such order shall be personally served on each of such persons and notice sent to the plaintiff according to the form in the Appendix: provided that the plaintiff or any of the persons whose names have been so added may at the trial object to the defendant defending on behalf of all or any of the persons as to whom such order has been made, and the judge may thereupon, if he thinks fit, strike the name of all or any of such persons out of the proceedings, and order the defendant to pay such costs as he shall think fit.

[Order III. Rule 9.]

9. Infants may sue as plaintiffs by their next friends, and may defend by their guardians appointed for that purpose, but nothing herein contained shall affect the right of any infant to sue as if he were of full age in the cases enumerated in sect. 96 of the Act.

51 & 52 Vict. c. 43.

[Order III. Rule 10.]

10. In those cases in which the Married Women's Property Act, 1882, does not apply, a married woman may sue by her next

NOTE. friend, nevertheless by leave of the judge or registrar she may sue or defend without her husband and without a next friend, on giving such security, if any, for costs, as the judge or registrar may require, and such leave may, in the discretion of the judge or registrar, be given with or without the imposition of terms, at the trial, or at any time during the course of the action or matter.

[Order III. Rule 11.] 11. In all cases in which lunatics and persons of unsound mind not so found by inquisition might respectively before the 1st November, 1875, have sued as plaintiffs or would have been liable to be sued as defendants in any action, they may respectively sue as plaintiffs in any action by their committee or next friend according to the practice of the Chancery Division of the High Court of Justice, and may in like manner defend any action by their committees or guardians appointed for that purpose.

[Order III. Rule 12.] 12. In all actions or matters to which any infant or person of unsound mind, whether so found by inquisition or not, or person under any other disability, is a party, any consent as to the mode of taking evidence or as to any other procedure given by the next friend, guardian, committee, or other person acting on behalf of the person under disability, shall, with the consent of the judge, have the same force and effect as if such party were under no disability and had given such consent. Provided that no such consent by any committee of a lunatic shall be valid as between him and the lunatic unless given with the sanction of the Lord Chancellor or Lords Justices sitting in Lunacy.

[Ord. III. Rule 13*a*.] 13*a*. Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and in any such case on application by any party to the action the registrar may order a statement of the names of the persons who were at the time of the accruing of the cause of action co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the registrar may direct.

[Order III. Rule 14*a*.] 14*a*. Where an action is brought by partners in the name of their firm the plaintiffs or their solicitors shall, on demand made in writing by or on behalf of any defendant, forthwith send by post to the defendant so applying and to the registrar the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. And if the plaintiffs or their solicitors shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the judge may direct, or the judge at the trial may adjourn the hearing on such terms as he may think fit. And when the names of the partners are so declared, the action shall proceed in the same

manner, and the same consequences in all respects shall follow as if they had been named as plaintiffs in the summons. But all the proceedings shall, nevertheless, continue in the name of the firm. NOTE.

16*a*. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name, and so far as the nature of the case will permit, all the provisions of these rules relating to proceedings against firms shall apply. [Order III. Rule 16*a*.]

Application for Arbitration.

8. An application for the settlement of any matter by arbitration shall be made by the applicant filing with the registrar a request for arbitration, intituled in the matter of the Act and in the matter of the arbitration, which request shall be entered and numbered as a plaint, and shall, with the subsequent proceedings thereon, be recorded in the special register hereinafter mentioned. Application, how made.

9. Particulars shall be appended or annexed to the request, containing— Particulars. [*Conf.* Order XL. 2. Order XLI. 3. Order XLIV. 2, 3.]

(*a*) A concise statement of the circumstances under which the application is made, and the relief or order which the applicant claims;

(*b*) The date of service of notice of the accident on the employer, or, if such notice has not been served, the reason for such omission; and

(*c*) The full names and addresses of the respondents, and of the applicant and his solicitor, if the proceedings are commenced through a solicitor.

10.—(1.) The request and particulars shall be according to such of the forms in the Appendix as shall be applicable to the case, with such modifications as the nature of the case shall require. Forms of request and particulars. Forms 1 to 4.

(2.) A copy of the notice of the accident shall be appended or annexed to the particulars. If this rule cannot be complied with the reason for the omission shall be stated in the particulars.

10*a*.—(1.) *Where an employer on whom a claim for compensation has been made desires to make an application for the settlement of any matter by arbitration, he shall file a* W. C. R., 1900. *Application by Employer.*

request for arbitration in accordance with Rule 8, *to which the workman, or the legal personal representative (if any) and the persons claiming to be dependants of a deceased workman, or the other persons (as the case may be) on whose behalf the claim was made shall be respondents.*

(2.) *Particulars shall be appended or annexed to the request, containing*

(*a*) *a concise statement of the circumstances under which the application is made ;*

(*b*) *a statement whether the applicant admits his liability to pay compensation, or denies such liability, wholly or partially, with (in the latter case) a statement of the grounds on and extent to which he denies liability ;*

(*c*) *a statement of the matters which the applicant desires to have settled by arbitration ; and*

(*d*) *the full names and addresses of the respondents, and of the applicant and his solicitor, if the proceedings are commenced through a solicitor.*

Copies for judge and respondents.

11. The applicant shall deliver to the registrar with the request and particulars a copy thereof for the judge or arbitrator, and a copy for each respondent to be served.

Where applicant is illiterate. [*Conf.* Order V. Rule 4*a*.]

12. Where the applicant is illiterate and unable to furnish the required information in writing, the request and particulars and copies shall be filled up by the registrar's clerk.

Proceedings on Arbitration before Judge.

Fixing Day and Place for Arbitration.

Fixing day and place for arbitration. [*Conf.* Order XL. Rule 5.]

13.—(1.) On the filing of a request for arbitration, the registrar shall transmit a copy of the request and particulars to the judge, who shall as soon as conveniently may be (if he decides to settle the matter himself), appoint a day and hour for proceeding with the arbitration. Such day shall be so fixed as to allow the copies of the request and particulars to be served on the respondents at least **fifteen* clear days before the day so fixed.

**W. C. R.*, 1899.

(2) The arbitration shall, subject as hereinafter mentioned, be held at the place at which the Court is held.

(3) Provided, that the judge may direct that the arbitration shall be held at any other place within the district of the Court, on application in that behalf made by any party to the arbitration, and on such party filing an undertaking to provide at his own expense a place to the satisfaction of the judge in which the arbitration may be held, and to pay the necessary expenses of the judge and officers of the Court attending at such place. [*Conf.* Order XXXIXB. Rules 1, 2.]

(4) If such direction is given before the notices mentioned in the next following rule are issued, the registrar shall insert in such notices the place at which the arbitration has been so directed to be held.

(5) If such direction is given after such notices have been issued, the registrar shall forthwith send notice by post to the parties of the place at which the arbitration has been so directed to be held.

Notice of Day Fixed.

14. On the day for proceeding with an arbitration being fixed, the registrar shall give or send by post notice in writing to the applicant, stating the place at which and the day and hour on and at which the arbitration will be proceeded with, and shall issue the copies of the request and particulars, under the seal of the court, for service on the respondents, together with notices signed by the registrar himself, and under the seal of the court, stating the place at which and the day and hour on and at which the arbitration will be proceeded with, and that if the respondents do not attend in person or by their solicitors such order will be made and proceedings taken as the judge may think just and expedient. Notice to parties. [*Conf.* Order XXXVIII. Rule 2.] Forms 6, 7.

14.—(2.) *Where the request is filed by an employer, the notices to be served on the respondents shall be modified by the omission of the words therein relating to the denial or admission of liability to pay compensation.* *W. C. R.* 1900. *Notice where employer is applicant.* *Form 7.*

W. C. R., 1900.

14.—(3.) *The words "ten clear days" shall be substituted for the words "five clear days" in Form 7 in the Appendix.*

Service on Respondents.

Service on respondents [Order VII Rule 30.]

15.—(1.) The copies and notices mentioned in the last preceding rule may be served—

(*a*) By a bailiff of a court;

or, at the request of the applicant or his solicitor,

(*b*) By the applicant or some clerk or servant in his permanent and exclusive employ; or

(*c*) By the applicant's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them.

(2.) Service may be effected either in accordance with the rules as to service of default summonses, or by registered post in accordance with the provisions of sub-sections 4 and 5 of section 2 of the Act with reference to service of notice in respect of an injury, and the provisions of those sub-sections shall apply to such service.

Act, sect. 2. sub-sects. 4, 5.

Where service effected otherwise than by bailiff. [Order VII., Rule 31.]

(3.) Where service is effected otherwise than by a bailiff, a copy of the document served, with the date and mode of service endorsed thereon, shall within three clear days next after the date of service, or such further time as may be allowed by the registrar of the court issuing such document, be delivered or transmitted to such registrar by the applicant or his solicitor. The applicant or his solicitor shall also (unless the respondent files an answer) after the time limited for filing an answer, deliver or transmit to the registrar an affidavit of the service of such document, according to Form 21 in the Appendix to the County Court Rules, with such variations as the circumstances of the case shall require.

NOTE.—The form referred to is as follows:—

[Order VII. Rule 31,] Form 21.

21.—**Affidavit of Service of a Default Summons.**

I, A. B., of .

[*or* G. H., a clerk [*or* servant] in the permanent and exclusive employ of]

NOTE.
[Order VII. Rule 31.] Form 21.

[*or* L. M., of , the solicitor for]

[*or*, R. S., of , solicitor, agent for L. M., of , the solicitor for]

[*or* X. Y., a clerk in the employ of [R. S., of , solicitor, agent for] L. M., of , solicitor for] the above-named plaintiff make oath and say:

That I [am a clerk [*or* servant] in the permanent and exclusive employ of]

[*or* am a clerk in the employ of [R. S., of , solicitor, agent for] L. M., of , solicitor for] the above-named plaintiff, and that I am over sixteen years of age.

That I did on the day of 19 , duly serve E. F., the above-named defendant [*or* one of the above-named defendants] with a summons, a true copy whereof is hereunto annexed, marked "A," by delivering the same personally to the said defendant [*here insert place where service was made*].

(*Indorse the copy-summons or other process thus*:—This paper, marked "A.," is the paper referred to in the annexed affidavit.)

Stay of Proceedings.

Stay of proceedings in other arbitrations, to abide decision as to liability in selected arbitration.
[*Conf.* Order VIII. Rules 2–6.]

16. Where several requests for arbitration are filed by different applicants against the same respondent in the same Court in respect of matters arising out of the same circumstances, the respondent may, on filing an undertaking to be bound, so far as his liability to pay compensation is concerned, by the award in such one of the said arbitrations as may be selected by the judge, apply to the judge under Order VIII. Rule 2, for an order to stay proceedings in the arbitrations other than the one so selected until an award is made in such selected arbitration; and Rules 2 to 6 of Order VIII. shall, with the necessary modifications, apply accordingly.

The Rules referred to are as follows:—

[Order VIII. Rule 2.]

2. Where several actions shall be brought by different plaintiffs against the same defendant in the same Court for or in respect of causes of action arising out of the same breach of contract, wrong, or other circumstances, the defendant may, on filing an undertaking to be bound so far as his liability in the said several actions is concerned by the decision in such one of the said actions as may be selected by the judge apply to the judge for an order to stay the proceedings in the actions other than in the one so selected, until judgment is given in such selected action.

NOTE.

[Order VIII. Rule 3.]

3. Application under the two preceding rules shall be made upon notice to the plaintiffs to be affected by any order made thereon.

[Order VIII. Rule 4.]

4. Upon the hearing of any application for consolidation of actions or for stay of proceedings, the judge shall have power to impose such terms and conditions and make such order in the matter as may be just.

[Order VIII. Rule 5.]

5. In case a judgment in a selected action under Rule 2 of this Order shall be given in favour of the defendant, the defendant shall be entitled to his costs up to the date of the order staying proceedings against every other plaintiff whose action is stayed, unless such plaintiff shall give the registrar within one month from such judgment written notice to set down his action for hearing, which, on the receipt of such notice, the registrar shall forthwith do and give notice thereof to the plaintiff and defendant.

[Order VIII. Rule 6.]

6. In case a judgment in a selected action shall be given against the defendant, the plaintiffs in the actions stayed shall be at liberty to proceed for the purpose of ascertaining and recovering their debts or damages and costs.

Answer by Respondents.

Answer by respondent. [*Conf.* Order X. Rules 9, 10.]

17. (1.) If any respondent desires to disclaim any interest in the subject matter of the arbitration, or considers that the applicant's particulars are in any respect inaccurate or incomplete, or desires to bring any fact or document to the notice of the judge, or intends to rely on the fact that notice of the accident was not served in accordance with section 2 of the Act, or that the claim for compensation was not made within the time limited by the said section, or intends to deny (wholly or partially) his liability to pay compensation under the Act, he shall, **ten* clear days at least before the day fixed for proceeding with the arbitration, file with the registrar an answer, stating his name and address, and the name and address of his solicitor (if any), and stating that he disclaims any interest in the subject matter of the arbitration, or stating in what respect the particulars are inaccurate or incomplete, or stating concisely any fact or document which he desires to bring to the notice of the judge, or on which he intends to rely, or the grounds on and extent to which he denies liability.

**W. C. R.* 1899.

Form 8.

(2.) Such respondent shall, with such answer, file copies thereof for the applicant and the judge, and one copy for each of the other respondents, and the registrar shall within twenty-four hours after receiving such copies transmit the same by post to the applicant and the judge and the other respondents respectively.

(3.) Subject to any answer so filed, and to the provisions of the next following paragraph, the applicant's particulars, and, in the case of a claim for compensation, the liability to pay compensation under the Act, shall be taken to be admitted.

(4.) Provided, that in case of non-compliance with this rule, and of the applicant's not consenting at the arbitration to permit a respondent to avail himself of any matter of which he should, pursuant to this rule, have given notice by filing an answer, the judge may, on such terms as he shall think fit, either proceed with the arbitration and allow the respondent to avail himself of such matter, or adjourn the arbitration to enable the respondent to file such answer.

Answer where employer is applicant. W. C. R. 1900.

(5.) *The provisions of this rule shall, with the necessary modifications, apply to a case in which a request for arbitration is filed by an employer; but a respondent who fails to file an answer shall not be taken to admit the truth of any statement in the applicant's particulars in which he denies, wholly or partially, his liability to pay compensation.*

Submission to Award or Payment into Court by Respondents.

Submission to award or payment into court by respondents. Form 9.

18. (1.) Where a respondent from whom compensation is claimed admits liability, he may at any time before the day fixed for proceeding with the arbitration,

(*a*) Where the application is made by an injured workman, file with the registrar a notice that the respondent submits to an award for the payment of a weekly sum, to be specified in such notice; or

(*b*) Where the application is made on behalf of the

dependants of a deceased workman, or for the settlement of the sum payable in respect of medical attendance on and the burial of a deceased workman who leaves no dependants, pay into court such sum of money as the respondent considers sufficient to cover his liability in the circumstances of the case.

[*Conf.* Order IX. Rule 11 (2).] Forms 10, 11.

(2.) The registrar shall, within twenty-four hours from the time of any notice filed or payment made pursuant to the last preceding paragraph, send notice thereof (with, where a notice is filed, a copy of such notice) to the applicant, and to the other respondents (if any).

Acceptance of weekly payment offered. Form 12. [*Conf.* Order IX. Rule 12*a*.]

(3.) If the applicant is a workman, and elects to accept in satisfaction of his claim the weekly payment specified in the respondent's notice, he shall send to the registrar and to the respondent by post, or leave at the registrar's office and at the residence or place of business of the respondent, a written notice stating such acceptance, within such reasonable time before the day fixed for proceeding with the arbitration as the time of filing of notice of submission by the respondent has permitted.

Acceptance of sum paid into Court. Form 12. [*Conf.* Order IX. Rule 12*a*.]

(4.) If the application for arbitration is made on behalf of the dependants of a deceased workman, or for the settlement of the sum payable in respect of medical attendance and burial as aforesaid, and the applicant is willing to accept the sum paid into court in satisfaction of the compensation payable to the dependants, or in respect of such medical attendance and burial (as the case may be), he shall send to the registrar and to the respondent by post, or leave at the registrar's office and at the residence or place of business of the respondent, a written notice of such willingness, within such reasonable time before the day fixed for proceeding with the arbitration as the time of payment into court by the respondent has permitted.

If there are any other respondents, the applicant shall in like manner give notice of such willingness to such

respondents; and if any of such respondents are willing to accept the sum paid into court in satisfaction of such compensation as aforesaid, they shall in like manner give notice of such willingness to the registrar and to the applicant and the other respondents.

Procedure if weekly payment offered or sum paid in is accepted.

(5.) If the applicant is a workman, and elects to accept in satisfaction of his claim the weekly payment submitted to by the respondent, or if in any other case the applicant and all the respondents give notice of their willingness to accept the sum paid into court, the following provisions shall apply :—

(*a*) Where the respondent submits to an award for the payment of a weekly sum, the judge may, on application made to him in or out of court, forthwith make an award directing payment of such weekly sum accordingly ;

(*b*) Where the respondent has paid money into court, further proceedings against such respondent shall be stayed, except as hereinafter mentioned ; and

(i.) If the applicant and the other respondents agree as to the apportionment and application of such sum, the judge may, on application made to him in or out of court on behalf of or with the consent of all such parties, forthwith make an award for such apportionment and application ;

(ii.) In any other case the arbitration may proceed as between the applicant and the other respondents.

Costs payable by respondent. [*Conf.* Order IX. Rule 12*a* (3).]

(*c*) In any such case the judge may, in his discretion, by his award order the respondent filing notice of submission to an award or paying money into court to pay such costs as the applicant and the other respondents or any of them may have properly incurred before the receipt of notice of submission to an award or payment into court, including, if the judge on consideration of the facts of the case shall so order, any items which might have been

allowed by order of the judge at the hearing of the arbitration.

Form 12. [*Conf.* Order IX. Rule 12*a* (4).]

(*d*) If the applicant or any respondent intends to apply for any such costs, he shall give notice of his intention in his notice of acceptance.

Procedure and costs if weekly sum offered or sum paid in is not accepted.

(6.) In default of notice of acceptance by the applicant and all the respondents, the arbitration may proceed; but if no greater weekly payment or compensation is awarded than that which the respondent has submitted to pay or has paid into court, such respondent shall not be liable to pay any further costs than such as he might have been ordered to pay if the weekly payment offered or sum paid into court had been accepted; and the judge may order any costs incurred by such respondent after notice of submission to an award or payment into court to be paid by any party who has not given notice of acceptance of such weekly payment or sum, and may order such costs to be set off against any costs payable to such party, or to be deducted from any weekly payment or compensation awarded to such party. The judge may also order any costs incurred after notice of payment into court by any party who has given notice of acceptance to be paid by any other party who has not given such notice, and to be deducted from any compensation awarded to such last-mentioned party.

W. C. R. 1900. *Submission to award or payment into Court where employer is applicant.*

(7.) *The provisions of this rule shall, with the necessary modifications, apply to a case in which an employer who has filed a request for arbitration admits liability to pay compensation.*

Notice to Parties against whom Indemnity claimed under section 4 or section 6, or otherwise.

Notice of claim to indemnity under sect. 4 or sect. 6, or otherwise. Form 13.

19. Where a respondent claims to be entitled under section 4 or section 6 of the Act or otherwise to indemnity over against any person not a party to the arbitration, he shall, five clear days before the day fixed for proceeding with the arbitration, file a notice of his claim, according

to the form in the Appendix; and the registrar shall seal such notice and deliver it to the respondent, who shall serve the same, together with a copy of the applicant's request and particulars, and of the notice served on the respondent under Rules 14 and 15, upon the person against whom such claim is made; and the provisions of Rule 15 shall apply to such service.

If person served makes default in appearing, he is to be deemed to admit validity of award against respondent.

20. If any person served with a notice under the last preceding rule (herein-after called the third party) desires to dispute the applicant's claim in the arbitration as against the respondent on whose behalf the notice has been given, he must appear before the judge on the day fixed for proceeding with the arbitration, or on any day to which he may have received notice from the registrar that the arbitration has been adjourned or postponed; and in default of his so doing he shall be deemed to admit the validity of any award made against such respondent, as to any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent, whether such award is made by consent or otherwise.

Application to judge for directions as to conduct of arbitration.

21.—(1.) The third party or the respondent may apply at or before the arbitration to the judge for directions; and the judge, upon the hearing of the application, may, if it shall appear desirable so to do, give the third party leave to resist the claim of the applicant against the respondent upon such terms as may be just, or to appear at the arbitration and take such part therein as may be just, and generally may give such directions as he shall think proper.

(2.) If the third party obtains leave to resist the claim of the applicant against the respondent, the judge shall have the same power to award costs as between the applicant and the third party as he has to award costs between the applicant and the respondent.

Judge how far empowered to decide questions as

22.—(1.) Nothing in these rules shall empower the judge to decide (otherwise than by consent) any question as to the liability of such third party to indemnify the

to liability of third party.

respondent, or to make any award in favour of the respondent against such third party, or to make any further or other order than that the third party shall not be entitled in any future proceedings between the respondent and such third party to dispute the validity of the award as to any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent.

(2.) Provided that, with the consent of the respondent and the third party,

[*Conf.* Order XI. Rule 2.]

(*a*) If the arbitration results in an award in favour of the applicant, or is finally decided otherwise than by an award, and the third party admits his liability to indemnify the respondent, the judge may, on application made to him at or after the hearing of the arbitration or the final decision thereof, make such award as the nature of the case may require in favour of the respondent against the third party; provided that execution thereon shall not be issued without leave of the judge or registrar until after satisfaction by the respondent of the award against him, or the amount recovered against him; or

[*Conf.* Order XI. Rule 3.]

(*b*) The judge may, on an application for directions, order any question as to the liability of the third party to make the indemnity claimed to be settled, as between the respondent and the third party, by arbitration after the arbitration between the applicant and the respondent, and may on such subsequent arbitration make such award as the nature of the case may require in favour of either party against the other.

[*Conf.* Order XI. Rule 4.]

(*c*) In any such case the judge may decide all questions of costs as between the respondent and the third party, and may order either of such parties to pay the costs of the other (including any costs payable by such party to any other party to the arbitration), or give such directions as to such costs as the justice of the case may require.

22*a*. *The provisions of Rules* 19 *to* 22 *shall, with the necessary modifications, apply to a case in which an employer who has filed a request for arbitration claims to be entitled to indemnity over against any person not a party to the arbitration.*

W. C. R. 1900. *Third party procedure where employer is applicant.*

23.—(1.) Where a respondent claims to be entitled to indemnity against any other respondent, a like notice may be issued and the like procedure may be adopted for the determination of questions between the respondents as might be issued and adopted if such last-mentioned respondent were a third party.

Claim to indemnity as between respondents. [*Conf.* Order XI. Rule 5.]

(2.) Provided that where both the undertakers as defined by the Act and a contractor with them are made respondents to an arbitration, and it is decided in such arbitration that the contractor is liable to pay compensation under the Act, the judge may, without any consent or admission of liability on the part of such contractor, make an award in accordance with paragraph (2) (*a*) of the last preceding rule in favour of the undertakers against the contractor.

See Act, sect. 4.

(3.) Nothing herein contained shall prejudice the rights of the applicant against any respondent.

Procedure on Arbitration.

24. Subject to the special provisions of these rules, the procedure in an arbitration shall be the same as the procedure in an action commenced in the County Court by plaint and summons in the ordinary way, and determined by the judge without a jury; and the statutory provisions and rules for the time being in force relating to such actions shall, with the necessary modifications, apply to such arbitration accordingly; and in the application of such provisions and rules the applicant's request for arbitration shall be deemed to be a summons with particulars annexed, the day fixed for proceeding with the arbitration shall be deemed to be the return day, and the applicant and respondents shall be deemed to be plaintiff and defendants respectively.

Procedure before judge

W. C. R. 1900. *Burden of proof of facts not admitted.*

24.—(2.) *Provided, that the burden of proof of any facts which are not admitted shall be the same, whoever the party may be by whom the request for arbitration is filed.*

Appointment of Medical Referees under Schedule II., Paragraph 13.

Appointment of medical referees under Act, Sched. 2, par. 13.

25.—(1.) Subject to and in accordance with regulations made by the Secretary of State and the Treasury under paragraph 13 of the second schedule to the Act, the judge may, at the hearing of an arbitration, appoint any legally qualified medical practitioner appointed by the Secretary of State for the purpose of the Act (in these rules called a "medical referee"), to report on any matter which seems material to any question arising in the arbitration.

(2.) Regulations made under the said paragraph shall, so far as they affect the County Court or an arbitrator appointed by the judge of the County Court, and proceedings in the County Court or before any such arbitrator, be deemed to be Rules of Court, and shall have effect accordingly.

(3.) When any appointment is made as aforesaid, the judge may, subject to and in accordance with such regulations, order the injured workman to submit himself for examination by the medical referee; and it shall be the duty of the workman, on being served with such order, to submit himself for examination accordingly.

Award.

Award. Form 14.

26.—(1.) The award of the judge on any arbitration shall be in writing, and shall be sealed, filed, and served on all persons affected thereby, and shall be enforceable in the same manner as a judgment or order of the Court.

52 & 53 Vict. c. 49, s. 7 (*c*).

(2.) The judge shall have power at any time to correct any clerical mistake or error in such award arising from any accidental slip or omission.

Proceedings before Arbitrator appointed by Judge.
Appointment of Arbitrator by Judge.

27. With respect to the appointment of an arbitrator by the judge, the following provisions shall apply :— Appointment of arbitrator by judge.

(*a*) If with respect to any Court the Lord Chancellor, by general order, authorises the settlement by an arbitrator appointed by the judge of matters which, in default of such authorisation, would be settled by the judge, the judge may from time to time, on an application being made for the settlement of any matter, either settle the same himself, or he may, with the approval of the Lord Chancellor, appoint, by writing under his hand, and filed in the Court, an arbitrator to settle such matter.

(*b*) If with respect to any Court the Lord Chancellor makes no such general order as aforesaid, then, on an application being made for the settlement of any matter, the judge may (if from the state of business in the Court, or for any other reason, he is unable to settle such matter within a reasonable time) apply to the Lord Chancellor to authorise the settlement of such matter by an arbitrator appointed by the judge.

(*c*) If the Lord Chancellor does not grant such authority, the judge shall proceed to settle the matter in accordance with the Act and these rules.

(*d*) If the Lord Chancellor grants such authority, the judge may, with the approval of the Lord Chancellor, appoint, by writing under his hand, and filed in the Court, an arbitrator to settle such matter.

(*e*) Where pursuant to paragraph 7 of the second schedule to the Act a judge of the High Court appoints a new arbitrator in the place of an arbitrator appointed by the judge, the party obtaining such appointment shall lodge with the registrar Act, Sched. 2, par. 7.

the order appointing such arbitrator, or a duplicate or copy thereof under the seal of the High Court; and thereupon the registrar shall act and the arbitration shall proceed in the same manner as if such arbitrator had been appointed by the judge.

Fixing Day for Arbitration.

Fixing day and place for proceedings before arbitrator.

28. Where any matter is to be settled by an arbitrator, the judge shall return the copy of the request for arbitration to the registrar, with the appointment of such arbitrator, to be transmitted to the arbitrator: and the registrar shall transmit the copy of the request and a copy of the appointment to the arbitrator, who shall, as soon as conveniently may be, appoint a day and hour for proceeding with the arbitration, in accordance with Rule 13, and the provisions of that rule as to the place where an arbitration shall be held shall apply. Provided, that where the arbitration is to be held at the place where the Court is held, the day appointed for the arbitration shall, if possible, be one on which the Court or other suitable accommodation in the Court House will be available for the arbitration.

Procedure before Arbitrator.

Procedure before arbitrator.

29.—(1.) On the day for proceeding with an arbitration being fixed the registrar shall proceed according to Rule 14, and thenceforward the arbitration shall proceed in the same manner as an arbitration before the judge; and these rules shall apply and the officers of the Court shall act accordingly, with the substitution of the arbitrator for the judge.

(2.) Provided that—

(*a*) In any case coming within the provisions of paragraph 5 (*a*) or paragraph 5 (*b*) (i.) of Rule 18, or in any other case in which, after an arbitrator has been appointed, but before the day fixed for proceeding with the arbitration, the parties agree upon an award, the judge may, on application

made to him in or out of Court on behalf of or with the consent of all parties, settle the matter himself; and thereupon the functions of the arbitrator as to such matter shall cease, and the registrar shall forthwith inform him that the matter has been settled; and

(*b*) Any application for the enforcement of or for staying proceedings on an award, which would in the case of an award made by the judge be required to be made to the judge, shall, in the case of an award made by an arbitrator, be in like manner made to the judge.

Submission of Question of Law by Arbitrator to Judge.

Submission of question of law by arbitrator to judge. Act, Sched. 2, par. 4.

30—(1.) Where an arbitrator (whether agreed on by the parties or appointed by the judge) submits any question of law for the decision of the judge under paragraph 4 of the second schedule to the Act, such submission shall be in the form of a special case.

Statement of case.

(2.) Such case shall be intituled in the matter of the Act and of the arbitration, and shall be divided into paragraphs numbered consecutively, and shall state concisely such facts and documents as may be necessary to enable the judge to decide the questions of law raised thereby. Upon the argument of such case the judge and the parties shall be at liberty to refer to the whole contents of such documents, and the judge shall be at liberty to draw from the facts and documents stated in the case any inference, whether of fact or of law, which might have been drawn therefrom if proved at the hearing of an arbitration.

Fixing day for hearing. [Order XL. Rule 5.] Form 15.

(3.) Such case shall be signed by the arbitrator and sent to the registrar, who shall transmit the same to the judge, and the judge shall as soon as conveniently may be appoint a day and hour for hearing the case, and instruct the registrar to give notice thereof forthwith to the parties. Such day shall be so fixed as to allow such notice to be

given ten days at least before the day fixed for the hearing, unless the judge shall, with the consent of all parties, fix an earlier day.

Copies of case.

(4.) The registrar shall, on the application and at the cost of any party, furnish him with a copy of the case.

Power of judge on hearing of case.

(5.) On the hearing of the case the judge may, after deciding the question submitted to him, remit the case with a memorandum of such decision to the arbitrator, for him to proceed thereon in accordance with such decision: or if the decision of the judge on the question submitted to him disposes of the whole matter, he may himself make an award in the arbitration in accordance with such decision.

(6.) The judge may remit the case to the arbitrator for re-statement or further statement.

Costs of special case.

(7.) The judge shall have the same power over the costs of a special case as he has over the costs of an arbitration, or he may direct that such costs shall be dealt with as costs attending the arbitration; and the provisions of the Act and these rules as to such costs shall apply accordingly.

Subsequent Arbitration in Matter already settled by Arbitrator.

Subsequent arbitration in matter settled by arbitrator.

31. Where an award has been made in any matter by an arbitrator appointed by the judge, any subsequent proceedings by way of arbitration in relation to any matter settled by such award shall be taken before the same arbitrator, if his services are available for the purpose of such proceedings, unless the judge shall otherwise direct.

Appearance of Parties in Arbitration.

Appearance of parties.

32.—(1.) A party to any arbitration under the Act may appear—

(*a*) In person.

Conf. County Courts Act, 1888, s. 72.

(*b*) By any solicitor who would be entitled to appear for such party in an action in the County Court:

(*c*) By counsel:

Or, by leave of the judge or arbitrator, a party may appear—

(*d*) By a member of his family:

(*e*) By a person in the permanent and exclusive employment of such party:

(*f*) In the case of a company or corporation, by any director of the company or corporation, or by the secretary or any other officer or any person in the permanent and exclusive employment of the company or corporation;

(*g*) By any officer or member of a society or any other body of persons of which such party is a member or with which he is connected; or

(*h*) Under special circumstances, by any other person.

(2.) No person other than a solicitor who appears or acts on behalf of any party in any arbitration under the Act shall be entitled to have or recover any fee or reward for so appearing or acting, other than such travelling expenses and (in the case of a workman or a member of his family) allowance for time (if any) as shall be allowed by the judge or arbitrator; provided that nothing in these rules contained shall affect the right of counsel to appear or act in any arbitration, or the right of any solicitor to recover costs in respect of his employment of counsel to appear or act as aforesaid. *Conf.* County Courts Act, 1888,

Costs.

33.—(1.) Any costs of and incident to an arbitration and the proceedings connected therewith directed by the judge or by an arbitrator (whether agreed on by the parties or appointed by the judge) to be paid by one party to another shall, in default of agreement between the parties as to the amount of such costs, be taxed according to such one of the scales of costs applicable to actions in the County Court as the judge or arbitrator shall direct; and in default of such direction shall be taxed according to the scale Costs.

which would be applicable if the proceeding had been an action in the County Court; and the statutory provisions and rules for the time being in force as to the allowance and taxation of costs in such actions shall apply accordingly.

W. C. R. 1900. (1.) (*a*) *Proceedings on an arbitration shall be within Order LA. Rule* 7.

NOTE.—The rule referred to is as follows:—

[Order LA. Rule 7.] 7. The Judge may, in his discretion, in any action under the Employers Liability Act, any action or matter remitted from the High Court, any action or matter commenced under the Admiralty or Equity jurisdiction of the Court, or any action of ejectment or in which title to any corporeal or incorporeal hereditaments comes in question, order that any of the following items mentioned in the scale of costs shall be allowed to the party in whose favour the order is made, in addition to or in substitution for, as the case may be, the costs to which he would otherwise be entitled, viz., items 31, 70, 86, and 93.

(2.) Where the subject matter of the arbitration is not a capital sum, the judge or arbitrator shall determine what, for the purpose of the allowance and taxation of costs, shall be considered to be the amount of the subject matter of the arbitration.

(3.) The judge or arbitrator, in dealing with the question of costs, may take into consideration any offer of compensation proved to have been made on behalf of the employer.

(4.) Where any workman submits himself for examination to a medical referee under paragraph 11 of the first schedule to the Act, and the certificate of the referee is used in any subsequent arbitration, any reasonable travelling and other expenses incurred by the workman in obtaining such certificate (if not otherwise provided for) may, by order of the judge or arbitrator, be allowed as costs in the arbitration.

(5.) Where a workman is ordered to submit himself for examination by a medical referee appointed to report under paragraph 13 of the second schedule to the Act, any reasonable expenses incurred by such workman in

travelling to attend on such referee for examination may, by order of the judge or arbitrator, be allowed as costs in the arbitration.

Taxation of costs awarded by arbitrator agreed on by parties.

34. Where any costs are awarded by an arbitrator agreed on by the parties, it shall be the duty of the registrar of the court in which a memorandum of the decision of the arbitrator is recorded pursuant to paragraph 8 of the second schedule to the Act, on application made to him, to tax such costs, and to enter in the register the amount of such costs allowed on taxation; and such entry shall be deemed to be part of such memorandum, and shall be enforceable accordingly.

W. C. R. 1899. *As to authority of solicitor to receive costs payable by adverse party.*

34a. Where any party to whom costs are awarded acts by a solicitor, such solicitor shall have the same authority to take out of Court or receive any sum paid into Court or payable in respect of such costs by the party against whom such costs are awarded as he would have if such costs were awarded in an action.

Duty of Judge as to taking Notes.

Note to be taken, on request, of question of law raised, &c., and copy furnished. [*Conf.* County Courts Act, 1888, ss. 120, 121.]

35. At the hearing of any arbitration or special case the judge, at the request of any party, shall make a note of any question of law raised, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision in the arbitration or on the hearing of the case: and he shall, at the expense of any party to such arbitration or case, furnish a copy of the note so taken to or allow a copy of the same to be taken by or on behalf of such party, and shall sign such copy, whether a notice of motion by way of appeal has been served or not.

Appeals.

Appeals. Act, Sched. 2, par. 4. [Order XXXII. Rule 1.]

36. Appeals under paragraph 4 of the second schedule to the Act shall be had in accordance with the provisions of the Rules of the Supreme Court relating thereto.

Deposit of order of Court of

37.—(1.) When the Court of Appeal has given judgment on any appeal, any party may deposit the order of the Court of Appeal, or an office copy thereof, with the

Appeal with registrar, and procedure thereon.

registrar: and the registrar shall file such order or copy, and shall transmit a copy thereof to the judge: and such order shall have the same effect as if it had been a decision of the judge.

[Order XXXII. Rules 2, 4.]

(2.) If such order has the effect of an award or decision in the matter in favour of any party, such order shall be served and recorded, and may be proceeded on, in the same manner as if it had been an award or decision of the judge.

(3.) If such order be to the effect that an award be made or a decision given in favour of any party, the judge shall make such award or give such decision accordingly.

(4.) If such order directs or involves a re-hearing or further hearing of the arbitration or special case, the judge shall as soon as conveniently may be appoint a day and hour for such re-hearing or further hearing, and shall instruct the registrar to give notice thereof forthwith to the parties.

(5.) Generally the judge shall make such award or give such decision, and give such directions and take or direct to be taken such proceedings in the matter, as may be necessary to give effect to the order of the Court of Appeal.

Memorandum under Schedule II., Paragraph 8.

Memorandum to be sent to registrar. Act, Sched. 2, par. 8. Form 16.

38.—(1.) The memorandum as to any matter decided by a committee or by an arbitrator or by agreement, which is by paragraph 8 of the second schedule to the Act required to be sent to the registrar, shall be intituled in the matter of the Act, and shall be left at the office of the registrar, or sent by post by registered letter addressed to the registrar at his office, as soon as may be after the matter has been decided.

(2.) Where the matter is decided after a medical referee has been appointed to report on any matter under paragraph 13 of the said second schedule, a copy of the report of such referee shall be annexed to the memorandum and recorded therewith; and if such referee attended any

proceeding in the arbitration, it shall be so stated in the memorandum.

Authentication and record of memorandum of decision of committee or arbitrator.

39. If the memorandum purports to be a memorandum of a decision of a committee or an arbitrator, and to be signed by the chairman and secretary of the committee, or by the arbitrator, the registrar shall record the memorandum without further proof of its genuineness; and it shall be the duty of the committee or arbitrator, as soon as may be after the decision, to draw up such memorandum and to sign the same or cause it to be signed as aforesaid, and to leave or send the same as aforesaid, or to deliver the same to some party interested, to be by him so left or sent.

Authentication and record of memorandum of decision arrived at by agreement.

40. If the memorandum purports to be a memorandum of a decision arrived at by agreement, then if such memorandum purports to be signed by or on behalf of all parties to such decision, the registrar shall record it without further proof.

Inquiry as to genuineness if such memorandum signed by one party only.

Form 17.

41. If the memorandum purports to be signed by or on behalf of one or some only of the parties, the registrar may record the same; or he may, before recording the same, send a copy thereof to the other parties affected, and request them to inform him whether the memorandum is genuine.

Proceedings thereon.

42. If all the parties admit the genuineness of the memorandum, or do not dispute it within a reasonable time, the registrar shall record it without further proof.

Notice if genuineness disputed.

Forms 18, 19.

43. If any party disputes the genuineness of the memorandum, the registrar shall inform the party by whom it was left with or sent to him of such dispute, and that the memorandum will not be recorded except with the consent in writing of the party disputing the same, or by order of the judge.

Application to judge to order memorandum to be recorded.

44. If the consent mentioned in the last preceding rule cannot be obtained, the party by whom the memorandum was left or sent may apply to the judge to order the same to be recorded.

Proceedings for Record of Memorandum or Rectification of Register.

Proceedings on application for record of memorandum or rectification of register.

Form 20.

See Order XII. Rule 11A.

45. The following provisions shall apply to an application for an order that a memorandum be recorded, or an application to the judge to rectify the register pursuant to paragraph 8 of the second schedule to the Act.

(*a*) The application shall be made in court on notice in writing, stating the relief or order which the applicant claims.

(*b*) Such notice shall be filed with the registrar, and copies thereof shall be served—

(i.) in the case of an application for an order that a memorandum be recorded, on the party disputing such memorandum ;

(ii.) in the case of an application to rectify the register, on every party who would be affected by such rectification, subject to the provisions of these rules as to the parties to an arbitration ;

or on the solicitor of such party, ten clear days at least before the hearing of the application, unless the judge or registrar shall give leave for shorter notice.

(*c*) On the hearing of the application, witnesses may be orally examined in the same manner as on the hearing of an action.

(*d*) On the hearing of the application the judge may make such order or give such directions as may be just.

(*e*) The provisions of the Act and these rules as to the costs of an arbitration before the judge shall apply to any such application.

Costs of Solicitor or Agent under Schedule II., Paragraph 12.

Application to determine costs payable

46. The following provisions shall apply to an application under paragraph 12 of the second schedule to the Act for

the determination of the amount of costs to be paid to a solicitor or agent :— to solicitor or agent.

(*a*) Such application may be made to the judge or arbitrator at or immediately after the hearing of the arbitration. Act, Sched. 2, par. 12.

(*b*) If not so made, such application may be made at a subsequent date, but in that case it shall, if the arbitration was before the judge or before an arbitrator appointed by him, be in every case made to the judge.

(*c*) The application, if made to the judge under the last preceding paragraph, shall be made in court on notice in writing in accordance with Rule 45. Form 21.

(*d*) *Such notice shall be served on the person for whom the solicitor or agent acted in accordance with the said rule, and the provisions of the said rule shall apply to the proceedings on such application.*

(*e*) *On the hearing of any application under this rule, the judge or arbitrator may award costs to the solicitor or agent, and may make an order declaring such solicitor or agent to be entitled to recover such costs from the person for whom he acted, or to be entitled to a lien for such costs on any sum awarded as compensation to such person, or to be entitled to deduct such costs from any such sum, or may make such order or give such directions as may be just.* *W. C. R.* 1899.

(*f*) *Any costs awarded to a solicitor or agent on any such application shall, in default of agreement between the parties as to the amount of such costs, be taxed according to such one of the scales of costs applicable to actions in the County Court as the judge or arbitrator shall direct; and in default of such direction such costs shall be taxed according to the scale which would be applicable if the proceeding had been an action in the County Court; and the statutory provisions and rules for the time being in force as to the allowance and taxation of costs in such actions shall apply accordingly.*

(*g*) *Where the subject matter of the arbitration is not a capital sum, the judge or arbitrator shall determine what, for the purpose of the allowance and taxation of such costs, shall be considered to be the amount of the subject matter of the arbitration.*

Provisions as to order declaring lien, &c. *W. C. R.* 1899.

47. Where an order is made by the judge or an arbitrator *awarding* costs to a solicitor or agent, and declaring such solicitor or agent to be entitled *to recover such costs from the person for whom he acted, or to be entitled* to a lien for *such* costs on any sum awarded as compensation *to such person*, or to be entitled to deduct *such* costs from any such sum, the following provisions shall apply :—

(*a*) The registrar shall, on application made to him, tax such costs.

(*b*) A copy of the order, and, when the amount to which such solicitor or agent is entitled has been ascertained by taxation, a memorandum of such amount, shall, at the request and cost of the solicitor or agent, be issued by the registrar for service on the party liable to pay the sum awarded as compensation; and service thereof may be effected on such party in accordance with Rule 15.

(*c*) A memorandum of such order, and when such amount has been ascertained a memorandum of such amount, shall be recorded in the register in which the memorandum or award under which the sum awarded as compensation is payable is recorded, and such last-mentioned memorandum or award shall have effect subject to such order and memorandum.

(*d*) The party liable to pay such compensation shall on demand pay to the solicitor or agent the amount to which he is entitled, but so that such party shall not be liable to pay any amount in excess of that which he is liable to pay for compensation, or to pay such amount by any other instalments than those by which he is liable to pay such compensation.

(*e*) If the party liable to pay such compensation fails on demand to pay any amount which he is liable to pay to such solicitor or agent, the judge may, on application made to him on notice to such party in accordance with Rule 45, and on proof of the order having been served on and demand for payment made to such party, order such party to pay such sum; and in default of payment the judge may order execution to issue to levy such amount.

(*f*) Payment made by or execution levied on the party liable to pay such compensation shall be a valid discharge to him, as against the party entitled to such compensation, to the amount paid or levied.

(*g*) *Where the sum awarded as compensation has been paid into Court, the amount to which the solicitor or agent is entitled shall be paid to him out of such sum.* *W. C. R.* 1899.

Certificate under Section 1, *Sub-section* 4.

48.—(1.) Where an action is brought in the County Court to recover damages independently of the Act for injury caused by any accident, and the court proceeds under sub-section 4 of section 1 of the Act, the certificate given by the Court shall be according to the form in the Appendix. Certificate under Act, sect. 1, sub-sect. 4. Form 22.

(2.) The registrar shall, on receiving a certificate given by any other Court under the said sub-section, record the same in like manner as if such certificate were a memorandum as to a matter decided by an arbitrator sent to the registrar pursuant to paragraph 8 of the second schedule to the Act.

Execution.

49.—(1.) When a party liable to pay compensation or costs under any award, memorandum, or certificate, has made default in payment of the amount awarded, or where payment is to be made by instalments, of any instalment, execution may issue against his goods without Execution. Form 23. [*Conf.* Order XXV. Rule 7.]

leave for the amount in payment of which he has made default.

(2.) Where such sum is not payable into court, the party applying for execution shall satisfy the registrar, by affidavit or otherwise, as to the amount in payment of which default has been made.

Proceedings under Debtors Act, 1869, *s.* 5.

Proceedings under Debtors Act, 1869, 32 & 33 Vict. c. 62, s. 5. *W. C. R.* 1900.

49*a*.—(1.) *Where proceedings by way of judgment summons under sect.* 5 *of the Debtors Act*, 1869, *are taken against a party liable to pay compensation or costs under any award, memorandum, or certificate, who has made default in payment of the amount awarded, or, where payment is to be made by instalments, of any instalment, the County Court Rules for the time being in force as to the committal of judgment debtors shall, with any necessary modifications, apply to such proceedings; provided, that the court shall not alter the terms or mode of payment of any sum to become payable in future under any award, memorandum, or certificate, otherwise than by consent, or under paragraph* 12 *of the second schedule to the Act.*

(2.) *Where the amount in payment of which default has been made is not payable into Court, the party applying for a judgment summons shall satisfy the Court, by affidavit, as to the amount in payment of which default has been made.*

(3.) *A judgment summons issued under this rule shall be according to the Form* 23A *in the Appendix.*

Other Proceedings for Enforcement of Award, Memorandum, or Certificate.

Other proceedings for enforcement of award, &c. *W. C. R.* 1900.

49*b*. *The County Court Rules for the time being in force as to proceedings for the enforcement of or the recovery of money due under judgments or orders of the County Court otherwise than by execution or committal shall, with the necessary modifications, apply to proceedings for the enforcement of or the recovery of money due under any award, memorandum, or certificate.*

Suspension of Proceedings or Weekly Payments on Refusal to submit to Examination under Paragraph 3 or Paragraph 11 of Schedule I.

Application to stay proceedings before or after award on refusal of workman to submit to examination under Act, Sched. I., par. 3, or par. 11.
Form 24.

50. In any case in which an arbitration is pending, or an award has been made or a memorandum recorded or a certificate given, and the employer or any person by whom the employer is entitled to be indemnified alleges that the workman who claims or has been awarded compensation refuses to submit himself for examination in accordance with paragraph 3 or paragraph 11 of the first schedule to the Act, or obstructs such examination, such employer or other person may apply to the judge or arbitrator to stay proceedings in the arbitration or to suspend the weekly payments awarded until such examination has taken place.

(2.) Such application shall be made in or out of Court in accordance with Rule 45, and the provisions of the said rule shall apply to the proceedings on such application, with the following modifications:—

(*a*) The notice shall be served five clear days at least before the hearing of the application, unless the judge or registrar shall give leave for shorter notice; and

(*b*) Where the application is made after award, it shall in every case be made to the judge.

Applications against Insurers under Section 5.

Application against insurers under sect. 5.
[*Conf.* Order XXVIA. Rule 1.]
Form 25.

51. Where a workman claims to be entitled under section 5 of the Act to a charge on any sum to which any employer is entitled from insurers, such workman may, upon lodging with the registrar of the Court in which the memorandum or award or certificate under which the employer is liable to pay compensation is recorded an affidavit made by the applicant or his solicitor, setting forth the circumstances in which the applicant claims to be entitled to such charge, enter a plaint to obtain payment of such sum, or so much thereof as may be sufficient to satisfy the compensation which the employer is liable to pay to the workman.

Summons thereon.

Form 26.

[*Conf.* Order XXVIA. Rule 1.]

52. Thereupon a summons calling upon the insurers to show cause why they should not pay into Court the sum to which the employer is entitled from them, or so much thereof as may be sufficient to satisfy the compensation which the employer is liable to pay to the workman, shall be issued by the registrar for service on the insurers.

Service of summons, and procedure thereon.

[*Conf.* Order XXVIA.]

Forms 28, 29.

53. Such summons shall be served in accordance with the provisions of rule 15, and when so served shall bind in the hands of the insurers all sums due, owing, or accruing from them to the employer in respect of the compensation which he is liable to pay to the workman under the memorandum or award or certificate; and, subject to these rules, the procedure on such summons shall be the same as if the applicant had obtained a judgment or order for the payment of money against the employer, and the sum to which the employer is entitled from the insurers were a debt due, owing, or accruing from the insurers to the employer, and the applicant had issued a garnishee summons against the insurers: and the provisions of Rules 5 to 9 and 11 to 13 of Order XXVIA. shall, with the necessary modifications, apply to such summons and the procedure thereon.

NOTE.—The rules referred to are as follows:—

Order XXVIA. Rule 5.

5. Where the garnishee shall pay into Court five clear days before the return-day the amount due from him to the debtor liable under the judgment or order, or an amount equal to the judgment or order, he shall not be liable for any costs incurred by the person who obtained the judgment or order.

Order XXVIA. Rule 6.

6. The registrar shall forthwith give notice of the payment into Court to the person who has obtained the judgment or order, and if such person elects to accept the money so paid into Court by the garnishee, and shall send to the registrar and to the garnishee by prepaid post or leave with the registrar a written notice stating such acceptance, within forty-eight hours after receipt of the notice of payment into Court, all further proceedings against the garnishee shall abate, and the registrar shall pay the money so paid into Court to the person who obtained the judgment or order in discharge or part discharge of the debt due to such person, and of the costs of issuing the garnishee summons.

Order XXVIA. Rule 7.

7. If the garnishee does not before the return-day of the

summons pay into Court the amount due from him to the debtor liable under the judgment or order, or an amount equal to the judgment or order, and does not on the return-day dispute the debt due or claimed to be due from him to such debtor, or if he does not appear on the return-day either in person or by some person duly authorised on his behalf, then the judge may give judgment for the plaintiff, and may order execution to issue to levy the amount due from the garnishee, or so much thereof as may be sufficient to satisfy the judgment or order. NOTE. Order XXVIA. Rule 7.

8. Upon the return day, should the amount paid into Court under Rule 5 of this Order be not accepted, the judge shall determine as to the liability of the garnishee to pay any further sum on account of the debt claimed to be due from him to the debtor, and as to the party by whom the costs of the proceeding by plaint shall be paid, and make such order as may be in accordance with such determination. Order XXVIA. Rule 8.

9. If the garnishee appears on the return-day and disputes his liability the judge may instead of giving judgment order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined. Order XXVIA. Rule 9.

11. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the judge may order such third person to appear, and state the nature and particulars of his claim upon such debt. After hearing the allegation of such third person and of any other person whom the judge by the same or any subsequent order, may order to appear, or in case of such third person not appearing when ordered, the judge may decide in favour of the person who obtained the judgment or order, or may order any issue or question to be tried or determined between the third person and the person who obtained the judgment or order, and may bar the claim of such third person or make such other order as such judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the judge shall think just and reasonable. Order XXVIA. Rule 11.

12. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the debtor, liable under a judgment or order, to the amount paid or levied, although such proceeding may be set aside, or the judgment or order reversed. Order XXVIA. Rule 12.

13. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, shall be in the discretion of the judge. Order XXVIA. Rule 13.

Provisions for notice to employer, or assignee, &c. Form 27.

54. It shall not be necessary in the first instance to give notice of the issue of the summons to the employer or his assignee (or, in case of bankruptcy, to the official receiver or other trustee, or, in case of liquidation of a company, to the provisional or other liquidator), but the judge or registrar may at any time direct such notice to be given; and thereupon the registrar shall issue for service on the person to whom such notice is directed to be given a copy of the summons, together with a notice signed by the registrar himself and under the seal of the Court, giving notice to such person as to the day on which he is to attend at the Court, and that if he does not attend, either in person or by his solicitor, at the place and time mentioned in the notice, such order will be made and proceedings taken as the judge may think fit; and such summons and notice shall be served in accordance with the provisions of Rule 15.

Provisions as to weekly payments payable by insurers.

55. Where the amount which the employer is liable to pay to a workman as compensation is a weekly payment, and such employer is entitled to a weekly payment of the same or any less amount from the insurers in respect of such amount, the judge may order the insurers to pay such weekly payment direct to the workman. In any such case the insurers shall have the same rights as the employer with respect to the review or redemption of such weekly payment.

Application against two or more sets of insurers.

56. Where an employer is entitled to separate sums from separate insurers in respect of the amount due to a workman, all or any two or more of such insurers may be made parties to one application.

Apportionment of sum payable by insurers, where more persons than one are entitled to compensation.

57.—(1.) Where it appears on any application under section 5 of the Act that the employer is liable to pay compensation in respect of more accidents than one, or to more workmen than one, either under one award or memorandum or certificate or under two or more separate awards or memorandums or certificates, and that such employer is entitled to any sum from insurers in respect of the amounts due under such liability, but such sum is

not sufficient to satisfy the whole of the amounts due under such liability, and has not, as between the employer and the insurers, been apportioned between such amounts or appropriated exclusively to some only of such amounts, the judge may order the insurers to pay such sum into Court, and may, after notice given to the persons entitled to compensation in such manner as the judge shall direct, apportion such sum between the several persons entitled to compensation in such manner as may be just. For the purpose of any such apportionment, the judge may order any weekly payment to be redeemed, and may appoint any one or more proper person or persons to represent any other persons having the same interest, and may direct any necessary inquiries or accounts to be made or taken, and generally may give such directions and make such orders, as to costs or otherwise, as may be just.

Transfer and consolidation of proceedings for this purpose.

(2.) Where the employer is liable to pay compensation as aforesaid under two or more separate awards or memorandums or certificates recorded in the same Court, the judge may for the purposes of this rule order the proceedings under such awards or memorandums or certificates to be consolidated; and where the employer is liable under separate awards or memorandums or certificates recorded in different Courts, the judge of the Court in which the summons to the insurers is issued may either request the judge of the other Court to transfer the proceedings in such other Court to the first mentioned Court, or may himself transfer the proceedings in the first mentioned Court to such other Court; and such orders for transfer and consolidation of proceedings may be made as may be just and expedient for the purpose of dealing with the matter in the manner most convenient to the several persons entitled to compensation.

Discovery in aid of application under sect. 5. Order XXV. Rule 52.

58. In any case in which the circumstances are such that an application may be made under section 5 of the Act, the provisions of Order XXV. Rule 52, as to discovery in aid of execution, shall apply in the same manner as if the employer were a debtor liable under a judgment

or order; and such provisions may be resorted to either before or after an application is made.

NOTE.—The rule referred to is as follows:—

Order XXV., Rule 52.

52. When a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the judge or registrar for an order that the debtor liable under such judgment or order, or in the case of a corporation, that any officer thereof, be orally examined, as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the judgment or order before the judge or registrar as the judge or registrar shall appoint; and the judge or registrar may make an order for the attendance and examination of such debtor, or of any other person, and for the production of any books or documents.

Payment and Application of Money directed to be Invested.

Payment into court and application of money directed to be invested. Act, sect. 5, and Sched. 1, pars. 6, 7, 13.

59. Where pursuant to paragraphs 6 and 7 or paragraph 13 of the first schedule to the Act, or pursuant to section 5 of the Act, any sum is agreed or is ordered by a committee or an arbitrator, or by the judge, to be invested in the post office savings bank by the registrar in his name as registrar, or to be paid into the post office savings bank in the name of the registrar, the following provisions shall apply:—

(*a*) The registrar of the Court in which the memorandum of the agreement or of the order of the committee or arbitrator under which such sum is to be invested is recorded, or, in the case of an award made by the judge or an arbitrator appointed by him, or of an order made by the judge under section 5 of the Act, the registrar of the Court in which the award or order was made, shall, on the memorandum or award or order being recorded, receive the sum to be invested from the party by whom the same is payable.

(*b*) Immediately on such sum being paid, or on payment thereof being enforced, the registrar shall invest the same in accordance with the agreement, award,

or order, and shall record such payment and investment in the special register hereinafter mentioned.

(*c*) Any sum so paid and invested shall be paid out of Court or otherwise disposed of in accordance with the agreement, award, or order under which the same is paid and invested, and, subject to the terms of such agreement, award, or order, in such manner as the judge from time to time shall direct, on application made to him in accordance with Rules 21 and 22 of Order IX.

Order IX. Rules 21, 22.

NOTE.—The rules referred to are as follows :—

21. In any action or matter in which a sum of money has been awarded to or recovered by an infant, or person of unsound mind not so found by inquisition, the judge may at or after the trial order that the whole or any part of such sum shall be paid into Court to the credit of an account intituled in the action or matter; and any sum so paid into Court may either be invested, or be paid from time to time out of Court to such person as the judge may direct, to be held and applied for the benefit of such infant or person of unsound mind in such manner as the judge from time to time shall direct.

Order IX. Rule 21.

22. When any moneys have been paid into Court or invested pursuant to the order of the judge under the last preceding rule, it shall not be necessary that application in regard to them shall be made by petition. Any person interested may apply in person to the judge or registrar, and he, on such evidence of right and identity as he may think necessary, may make such order as he may deem to be just.

Order IX. Rule 22.

Proceedings in one Court as to Subject-matter of Award or Memorandum recorded in another Court.

60. Where an award, or a memorandum under paragraph 8 of the second schedule to the Act, or a certificate under sub-section 4 of section 1 of the Act, has been recorded in any Court, and any party desires to take any subsequent proceedings with reference to the subject-matter of such award, memorandum, or certificate in any other Court under paragraph 9 of the said schedule, he

Filing of certified copy of memorandum, &c., recorded in one Court under Act, sched. 2, par. 8, before taking subsequent proceedings

in another court under par. 9.

shall before taking such proceedings obtain from the registrar of the first-mentioned Court a certified copy of such award, memorandum, or certificate, and shall file the same in the Court in which he desires to take proceedings, and the registrar of such last-mentioned Court shall record the same as if it had been an award made in or a memorandum or certificate sent to the Court.

Transfer of Proceedings.

Transfer. [*Conf.* County Courts Act, 1888, s. 85.]

61. If the judge shall be satisfied by any party to any matter under the Act pending in his Court that such matter can be more conveniently proceeded with in any other Court, he may order such matter to be transferred to such other Court; and thereupon the registrar shall forthwith transmit by registered post to the registrar of the Court to which such matter is transferred all original documents filed in such matter, and a certified copy of all records made with reference to such matter, and shall transfer to such last-mentioned Court any money invested in his name as registrar; and thenceforth such matter shall be proceeded with in the Court to which it is transferred in the same manner as if it had originally been commenced therein. The provisions of Order VIII., Rule 9, shall apply to any such transfer or application for a transfer.

Order VIII. Rule 9.

NOTE.—The rule referred to is as follows:—

Order VIII. Rule 9.

9. Where application is intended to be made for the transfer of any action, matter, or proceeding under section eighty-five of the Act, or under the last preceding Rule, or under Order XXXIII. Rule 12, three clear days' notice in writing of such intended application shall be given by the applicant to the registrar of the Court in which such action, matter, or proceeding is pending, and to all parties who may be affected by such application; but the judge may, at any time, by consent of all parties, or without such consent if he shall think fit, order a transfer, although this rule has not been complied with. When a transfer is ordered, the judge may make such order as to the costs incurred before or occasioned by such transfer as he shall think fit.

Filing and Service of Documents and Notices.

Filing and service of documents and notices.

62.—(1.) Where any document is to be filed with the registrar under these rules, that document may be so filed by delivering it at the office of the registrar, or by sending it by post addressed to the registrar at his office.

(2.) Where any document is to be so filed, there shall be filed with the original document as many copies of the document as there are persons to whom copies of the document or any part thereof are to be sent by the registrar, and in addition a copy for the use of the judge or arbitrator.

(3.) Where any document is under these rules to be sent to any person by the registrar, that document may be sent by post.

(4.) Any proceeding, document, or notice which is under these rules to be served on any party may be served on such party by the opposite party or his solicitor; and where no special provision as to the mode of service is made by these rules, any such proceeding, document, or notice may be served on such party, or where he acts by a solicitor, on his solicitor, in manner provided by sub-sections 2 to 5 of section 2 of the Act with reference to service of notice in respect of an injury.

Act, sect. 2, sub-secs. 2 to 5.

Procedure Generally.

Provisions as to parties acting by solicitors, and as to substituted service and notice in lieu of service. [Order XXIII. Rule 4; Order LI. Rules 1 to 6.]

63. The provisions of Order XXIII. Rule 4, and Order LI. Rules 1 to 6, as to parties acting by solicitors, and as to substituted service and notice of lieu of service, shall apply to proceedings under the Act.

NOTE.—The rules referred to are as follows:—

Order XXIII. Rule 4.

4. When a party acts by a solicitor, service of any judgment or order in the nature of a decree, and of any interlocutory order, or any notice relating to any such order when directed to be served, may be made by or upon such solicitor, as the case may be.

Order LI. Rule 1.

1. Where by these rules any act may be done by any party, such act may be done either in person or by his solicitor or agent, if it can be legally done by an agent.

Order LI. Rule 2a.

2*a*. Where a party acts by solicitor, service of any proceeding or document upon such solicitor, or delivery of the same at his office,

NOTE.
Order LI. Rule 2*a*.

or sending the same to him by post prepaid, shall be deemed to be good service upon the party for whom such solicitor acts, as upon the day when the same is so served or delivered, or upon which in the ordinary course of post it would be delivered, except in cases where by these Orders personal service upon a party is required.

Provided that the provisions of this rule shall not extend to any default or judgment summons, nor except as provided by Order VII. Rule 9*c*, to any ordinary summons.

Order LI. Rule 3.

3. A solicitor acting for a party in any action or matter may give notice in writing by post or otherwise to the registrar and to the other party, or his solicitor, that he is so acting, whereupon service of any document, notice, or proceeding whatsoever authorised by these rules to be served by or upon a solicitor so acting shall be served by or upon such solicitor accordingly, and he shall be deemed to be the solicitor acting for the party on whose behalf he has given such notice, until notice of change of solicitor has been duly given. No notice need be given under this rule by a solicitor acting for the plaintiff where the plaint has been entered by such solicitor and the particulars duly signed by him.

Order LI. Rule 4.

4. Where a solicitor undertakes the service of any process, he shall make the necessary copies of each process, and the registrar shall seal the same and return them to the solicitor for service.

Order LI. Rule 5.

5. Any party who acts by solicitor shall be at liberty to change his solicitor without any order for that purpose, but when any such change is made he shall give twenty-four hours' notice in writing to the registrar and to the solicitor, if any, acting for any other party to the action or proceedings of such change, and of the name or firm and place of business of the new solicitor, and the registrar shall file the notice given to him; but until such notice is filed and a copy thereof served, the former solicitor shall be continued as the solicitor of the party.

Order LI. Rule 6.

6. Where by reason of the absence of any party, or from any other sufficient cause, the service of any summons (other than a default summons), notice, proceeding, or document, cannot be made, the judge or registrar may, upon an affidavit showing grounds, make such order for substituted service, or for the substitution for service of notice by advertisement or otherwise, as may be just.

Procedure, where not otherwise provided for.
See Tithe Rules 57.

64. Where any matter or thing is not specially provided for under these rules, the same procedure shall be followed and the same provisions shall apply, as far as practicable, as in a similar matter or thing under the County Courts Act, 1888, and the rules made in pursuance of that Act.

Record of Proceedings.—Special Register.

Record of proceedings before judge or arbitrator. Special register. Form 30.

65. Proceedings under the Act before the judge or an arbitrator appointed by him shall be recorded in the books of the Court in the manner in which other proceedings in the Court are recorded; and the registrar shall also keep a special register for the purposes of the Act, in which he shall record—

(*a*) A memorandum of every application made to the judge for the settlement of any matter by arbitration;

(*b*) A memorandum of every appointment of an arbitrator made by the judge or by a judge of the High Court;

(*c*) A memorandum of every proceeding taken in any arbitration before the judge or an arbitrator prior to the award;

(*d*) A memorandum of every appointment of a medical referee by the judge or arbitrator, and of his report, and if he is requested to attend any proceeding in the arbitration, of such request and attendance;

(*e*) A memorandum of every award made by the judge, or by an arbitrator appointed by him;

(*f*) A copy of every certificate under sub-section 4 of section 1 of the Act given by the Court, or sent to the registrar from any other Court;

(*g*) A memorandum of every special case submitted to the judge, and of the proceedings and order thereon;

(*h*) A memorandum of every judgment given by the Court of Appeal on any appeal;

(*i*) A copy of every memorandum sent to the registrar pursuant to paragraph 8 of the second schedule to the Act, and of the report (if any) of the medical referee annexed thereto, with a note stating whether such memorandum was recorded without further proof, or after inquiry, or by order of the judge;

(*j*) If such memorandum is recorded after inquiry, a memorandum of the inquiries made and of the result thereof;

(*k*) If such memorandum is recorded by order of the judge, a memorandum of the application to the judge, and of the order made thereon;

(*l*) A memorandum of the result of every taxation of costs under any such memorandum, or under any award or order;

(*m*) A memorandum of every application to rectify the register in respect of any memorandum, and of the proceedings and order thereon;

(*n*) A memorandum of every application to the judge or arbitrator, under paragraph 12 of the second schedule to the Act, to determine the amount of costs to be paid to a solicitor or agent, and of the proceedings and order thereon, and of the result of any taxation under such order;

(*o*) A copy of every certified copy filed pursuant to Rule 60;

(*p*) A memorandum of every proceeding taken in the Court for the stay of any proceedings or the enforcement of any award, order, memorandum, or certificate, and of the result of such proceeding;

(*q*) A memorandum of every application to the judge for an order against insurers under section 5 of the Act, and of the proceedings under such application, and the order made thereon;

(*r*) A memorandum of every sum paid into court and invested by the registrar;

(*s*) A memorandum of every application made to the Court with reference to any such sum, and of every order made on such application, and of the manner in which such sum is applied or disposed of;

(*t*) A memorandum of every application for transfer, and of the order thereon, and the proceedings under such order;

(*u*) The like memorandum as to every matter transferred to the Court as would have been recorded as to such matter if it had been originally commenced and prosecuted in the Court;

(*v*) A memorandum of any other matter which the judge shall order to be recorded with reference to any matter brought into or proceeding taken in the Court under the Act.

Matters, how distinguished.

66. Every matter brought into the Court under the Act shall be intituled in the matter of the Act, and shall be distinguished by a separate number in addition to the number of the plaint (if any); and all documents filed and subsequent proceedings taken in the Court with reference to such matter shall be intituled in like manner, and shall be distinguished by the same number; and the entries made in the special register with respect to each such matter shall be entered together, and shall be kept separate from the entries with respect to any other matter.

Matters, how distinguished. [*Conf.* Order II. Rule 3.]

Forms.

67. The forms in the Appendix, where applicable, and where they are not applicable forms of the like character, with such variations as the circumstances may require, may be used in proceedings under the Act.

Forms in Appendix or like forms may be used. *See* Tithe Rules 58.

APPENDIX.

FORM 1.

Application for Arbitration by an injured Workman with respect to the Compensation payable to him.

In the County Court of holden at .

No. of Plaint .

In the matter of the Workmen's Compensation Act, 1897.

No. of Matter .

In the matter of an Arbitration between

A.B.
of (*address*)
(*description*) Applicant,

and

C.D. & Co., Limited,
of (*address*)
(*description*) Respondents.

An arbitration under the Workmen's Compensation Act, 1897, is hereby requested between A.B. and C.D. & Co., Limited, as to the amount of compensation payable to the said A. B. under the said Act, in respect of personal injury caused to the said A.B. by accident arising out of and in the course of his employment.

Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and address of injured workman.

2. Name, place of business, and nature of business of respondents.

3. Nature of employment of workman at time of accident, and whether employed under respondents or under contractors with them. [*If employed under contractors who are not respondents, name and place of business of contractors to be stated.*]

4. Date and place of accident, nature of work on which workman was then engaged, and nature of accident, and cause of injury.

5. Nature of injury.

6. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.

7. Average weekly earnings during the 12 months previous to the injury, if the workman had been so long employed under the same employer, or if not, during any less period during which he had been so employed.

8. Estimated average amount which the workman is able to earn after the accident.

9. Payments not being wages received from employer in respect of the injury during the period of incapacity.

10. Amount of fine (if any) under any enactment relating to mines or factories applied for benefit of injured workman.

11. Amount claimed as compensation.

12. Date of service of statutory notice of accident on respondents, and whether given before workman voluntarily left the

PARTICULARS—*continued.*

employment in which he was injured. [*A copy of the notice to be annexed.*]

13. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are:

Of the Applicant,

Of his Solicitor,

The name and address of the respondents to be served with this application are:

Dated this day of

(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

FORM 2.

Application for Arbitration by Legal Personal Representative of Deceased Workman on behalf of his Dependants, or by Dependants of Deceased Workman where no Legal Personal Representative, with respect to the Compensation payable in respect of the Injury to such Dependants, where Death has resulted from an Injury to the Workman, and the Settlement of Questions as to who are Dependants, and the Apportionment and Application of such Compensation.

In the County Court of , holden at

No. of Plaint

In the matter of the Workmen's Compensation Act, 1897.

No. of Matter

In the matter of an Arbitration between

E.F.,
of (*address*)
(*description*) Applicant,

and

C.D. & Co., Limited,
of (*address*)
(*description*)
and
G.B.,
of (*address*)
(*description*) Respondents.

[*or as the case may be; see Rule* 4].

An arbitration under the Workmen's Compensation Act, 1897, is hereby requested between E.F., , the legal personal representative of A.B. , deceased, acting on behalf of the dependants of the said A.B. [*or* between E.F. , a dependant of A.B. deceased] and C.D. & Co., Limited, , and G.B. , who claims to be a dependant of the said A.B. ,

[*or as the case may be; see Rule* 4.]

with respect to the compensation payable to the dependants of the said A.B. under the said Act, in respect of the injury caused to the said dependants by the death of the said A.B. , which resulted from injury caused to the said A.B. by accident arising out of and in the course of his employment, and the settlement of questions as to who are dependants and the apportionment and application of such compensation.

Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and late address of deceased workman.

2. Name, place of business, and nature of business of respondents from whom compensation is claimed.

3. Nature of employment of deceased workman at time of accident, and whether employed under respondents or under contractors with them. [*If employed under contractors who are not respondents, name and place of business of contractors to be stated.*]

4. Date and place of accident, nature of work on which deceased workman was then engaged, and nature of accident, and cause of injury.

5. Nature of injury to deceased workman, and date of death.

6. Earnings of the deceased workman during the three years next preceding the injury, if he was so long in the employment of the same employer, and if he was not so long in that employment, particulars of his average weekly earnings during the period of his actual employment under the said employer.

PARTICULARS—*continued.*

7. Amount of weekly payments (if any) made to the deceased workman under the Act.

8. Amount of fine (if any) under any enactment relating to mines or factories applied for benefit of deceased workman or his dependants.

9. Name and address of applicant for arbitration.

10. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased workman or as a dependant, and if as a dependant, particulars showing how he is so.

11. Particulars as to the dependants of the deceased workman by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased workman at the time of his death.

12. Particulars as to any persons claiming to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, and descriptions and occupations (if any).

13. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied.

14. Date of service of statutory notice of accident on respondents from whom compensation is claimed, and whether given before deceased workman voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

15. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are:

Of the Applicant,

Of his Solicitor,

The names and addresses of the respondents to be served with this application are:

C.D. & Co., Limited.

G.B.

Dated this day of

(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

FORM 3.

Application for Arbitration as to who are Dependants, or as to the Amount payable to each Dependant, where the total amount Payable as Compensation to the Dependants of a Deceased Workman has been agreed or ascertained.

In the County Court of , holden at

No. of Plaint

In the matter of the Workmen's Compensation Act, 1897.

No. of Matter

In the matter of an Arbitration between

E.F.,
of (*address*)
(*description*) Applicant,

and

C.D. & Co., Limited,
of (*address*)
(*description*)
and

G.H.,
of (*address*)
(*description*)

I.K.,
of (*address*)
(*description*)
and

L.M.,
of (*address*)
(*description*) Respondents.

[*or as the case may be; see Rule* 5.]

An arbitration under the Workmen's Compensation Act, 1897, is hereby requested between E.F. , the legal personal representative of A.B. , deceased (acting on behalf of N.O., P.R., &c., , dependants of the said A.B.,), and C.D. & Co., Limited, and G.H., J.K., and L.M., , who are or claim to be dependants of the said A.B.,

[*or as the case may be; see Rule* 5.]

to settle questions as to who are dependants of the said A.B., and as to the apportionment and application of the agreed [*or* ascertained] amount of compensation payable to the dependants of the said A.B. , under the said Act in respect of the injury caused to the said dependants by the death of the said A.B. , which resulted from injury caused to the said A.B. by accident arising out of and in the course of his employment.

Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and late address of deceased workman.

2. Name and place of business of employers by whom compensation has been paid or is payable.

3. Date of accident to deceased workman, and date of death.

4. Agreed or ascertained amount of compensation to be paid to dependants of deceased workman.

5. Particulars as to whether the compensation money is still payable by the employers or has been paid by them, and if so, to whom, and in whose hands it now is.

6. Character in which the applicant applies

PARTICULARS—*continued.*

for arbitration, *i.e.*, whether as legal personal representative of deceased workman or as a dependant, and if as a dependant, particulars showing how he is so.

7. Particulars as to the dependants or persons claiming to be dependants by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and if infants, their respective ages, and stating whether they were or claim to have been wholly or partially dependent on the earnings of the deceased workman at the time of his death.

8. The like particulars as to any dependants who are made respondents.

[NOTE.—*If there is a Legal Personal Representative, and he is not the Applicant, he must be made a Respondent.*]

9. Particulars as to any persons claiming to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, descriptions, and occupations (if any).

10. Particulars of the manner in which the applicant claims to have the amount of compensation apportioned and applied.

The names and addresses of the applicant and his solicitor are:

Of the Applicant,

Of his Solicitor,

The names and addresses of the respondents to be served with this application are:

C.D. & Co., Limited.

G.H.

I.K.

L.M.

[*or as the case may be*].

Dated this day of

(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

FORM 4.

Application for Arbitration by Legal Personal Representative of Deceased Workman with respect to the Compensation payable in respect of Expenses of Medical Attendance and Burial, or by Person to whom such Expenses are due, where Deceased leaves no Dependants.

In the County Court of , holden at

No. of Plaint

In the matter of the Workmen's Compensation Act, 1897.

No. of Matter

In the matter of an Arbitration between

E.F.,
of (*address*)
(*description*) Applicant,

and

C.D. & Co., Limited,
of (*address*)
(*description*)
and

G.H.,
of (*address*)
(*description*) Respondents.

An arbitration under the Workmen's Compensation Act, 1897, is hereby requested between E.F. and C.D. & Co., Limited, and G.H. , as to the compensation payable under the said Act in respect of the reasonable expenses of medical attendance on and the burial of A.B. , deceased, whose death resulted from injury caused to the said A.B. , by accident arising out of and in the course of his employment, and the apportionment and application of such amount.

Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and late address of deceased workman.

2. Name, place of business, and nature of business of respondents from whom compensation is claimed.

3. Nature of employment of deceased workman at time of accident, and whether employed under respondents or under contractors with them. [*If employed under contractors who are not respondents, name and place of business of contractors to be stated.*]

4. Date and place of accident, nature of work on which deceased workman was then engaged, and nature of accident, and cause of injury.

5. Nature of injury to deceased workman, and date of death.

6. Name and address of applicant for arbitration.

7. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased workman, or as a person to whom expenses in respect of which compensation is payable are due; and if the latter, particulars must be given of the circumstances under which the expenses are claimed to be due to the applicant.

8. Particulars as to any other persons who claim that expenses in respect of which compensation is payable are due to them, and who are therefore made respondents, with their names and addresses.

9. Particulars of amount claimed as compensation, and of the manner in which the applicant desires such amount to be apportioned and applied.

10. Date of service of statutory notice of accident on respondents from whom compensation is claimed, and whether given before deceased workman voluntarily left the

PARTICULARS—*continued.*

employment in which he was injured. [*A copy of the notice to be annexed.*]	
11. If notice not served, reason for omission to serve same.	

The names and addresses of the applicant and his solicitor are:

Of the Applicant,

Of his Solicitor,

The names and addresses of the respondents to be served with this application are:

C.D. & Co., Limited.

G.H.

Dated this day of

(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

FORM 5.

Application for Arbitration with respect to the Review, Termination, Diminution, Increase or Redemption of a Weekly Payment.

In the County Court of , holden at

No. of Plaint

In the matter of the Workmen's Compensation Act, 1897.

No. of Matter

In the matter of an Arbitration between

C.D. & Co., Limited,
of (*address*)
(*description*) Applicants,

and

A.B.,
of (*address*)
(*description*) Respondent.

[*or as the case may be; see* Act, Sched. 1, pars. 12, 13.]

An arbitration under the Workmen's Compensation Act, 1897, is hereby requested between C.D. & Co., Limited, and A.B.

[*or as the case may be; see* Act, Sched. 1, pars. 12, 13.]

with respect to the review and termination [*or* diminution, increase, *or* redemption, *as the case may be*] of the weekly payment payable

to the said A.B. under the said Act in respect of personal injury caused to the said A.B. by accident arising out of and in the course of his employment.

Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and address of injured workman.
2. Name and place of business of employers by whom compensation is payable.
3. Date and nature of accident.
4. Date of agreement, decision, award, or certificate fixing weekly payment, amount of such payment, and date from which it commenced.
5. Relief sought by applicant, whether termination, diminution, increase, or redemption.
6. Grounds on which termination, diminution, or increase is claimed.

The names and addresses of the applicants and their solicitor are :

Of the Applicants,

Of their Solicitor,

The name and address of the respondent to be served with this application are :

Dated this day of

(Signed)

Applicants.

[*Or*

Applicants' Solicitor.]

FORM 6.

Notice to Applicant of Day upon which Arbitration will be proceeded with.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE that the Judge of this Court [*or* Mr. the arbitrator appointed by the Judge of this Court] will proceed with the arbitration in this matter at on the day of at the hour of o'clock in the noon.

Dated this day of

To

Of

Registrar of the Court.

FORM 7.

Notice to Respondent of Day upon which Arbitration will be proceeded with.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE that the Judge of this Court [*or* Mr. the arbitrator appointed by the Judge of this Court] will proceed with the arbitration applied for in the request and particulars a sealed copy of which is served herewith at on the day of at the hour of o'clock in the noon: and that if you do not attend either in person or by your solicitor at the time and place above mentioned such order will be made and proceedings taken as the Judge [*or* arbitrator] may think just and expedient.

And further take notice that if you wish to disclaim any interest in the subject matter of the arbitration, or consider that the applicant's particulars are in any respect inaccurate or incomplete, or desire to bring any fact or document to the notice of the Judge [*or* arbitrator], or intend to rely on any fact, or to deny (wholly or partially) your liability to pay compensation under the Act, you must file with me an answer, stating your name and address and the name and address of your solicitor (if any), and stating that you disclaim any interest in the subject matter of the arbitration, or stating in what respect the applicant's particulars are inaccurate or incomplete, or stating concisely any fact or document which you desire to bring to the notice of the Judge [*or* arbitrator], or on which you intend to rely, or the grounds on and extent to which you deny liability to pay compensation.

Such answer, together with a copy thereof for the Judge [*or* arbitrator], and a copy for the applicant and for each of the other respondents, must be filed with me 10* clear days at least before the day of

If no answer is filed, and subject to such answer, if any, the applicant's particulars and your liability to pay compensation will be taken to be admitted.

Dated this day of

To

Of Registrar of the Court.

FORM 8.

Answer by Respondents.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the respondent, G.H., disclaims any interest in the subject matter of the above arbitration.

* See Rule 14 (3), W. C. R. 1900.

Or

That the respondents, C.D. & Co., Limited, state that the applicant's particulars filed in this matter are inaccurate or incomplete in the following particulars :

Or

That the respondents. C.D. & Co., Limited, desire to bring to the notice of the Judge [*or* arbitrator] the following facts :

That the applicant, A.B., refuses to submit himself to medical examination as required by the respondents, C.D. & Co., Limited, in accordance with paragraph 3 of the 1st Schedule to the said Act [*or* obstructs the medical examination required by the respondents, C.D. & Co., Limited, in accordance with paragraph 3 of the 1st Schedule to the said Act]

[*or as the case may be*]

Or

That the respondents, C.D. & Co., Limited, intend at the hearing of the arbitration to give in evidence and rely on the following facts :

That no notice of the alleged accident was given to the respondents as required by section 2 of the said Act ;

That the claim for compensation with respect to the alleged accident was not made within six months from the occurrence of the accident [*or in case of death*, within six months of the death of the said A.B.] ;

That a scheme of compensation [benefit *or* insurance] for the workmen of the respondents, C.D. & Co., Limited, in employment as has been duly certified by the Registrar of Friendly Societies, and such certificate has not been revoked, and the said C.D. & Co., Limited, contracted with the said A.B. by a contract which was in force at the date of the alleged accident that the provisions of the said scheme should be substituted for the provisions of the above-mentioned Act, and the said C.D. & Co., Limited, are consequently liable only in accordance with the said scheme :

Or

That the respondents, C.D. & Co., Limited, deny their liability to pay compensation under the above-mentioned Act in respect of the injury to A.B. mentioned in the applicant's particulars, and that the grounds on which they deny their liability are :

That the employment of the said A.B. was not an employment to which the said Act applies ; *or*

That the injury to the said A.B. was not caused by accident arising out of and in the course of his employment ; *or*

That the injury to the said A.B. is attributable to the serious and wilful misconduct of the said A.B. :

That at the time of the alleged accident the said A.B. was not immediately employed by the respondents C.D. & Co., Limited, but was employed by of , a contractor with the said C.D. & Co., Limited, in the execution by the said of work which was merely ancillary [*or* incidental] to, and was no part of or process in the trade or business carried on by the said C.D. & Co., Limited.

[*or as the case may be*]

And further take notice, that the names and addresses of the said respondents and their solicitors are

Of the Respondents,
C.D. & Co., Limited,

Of their Solicitors,

Dated this day of

(Signed)
Solicitors for the Respondents,
C.D. & Co., Limited.

To the Registrar of the Court, and

To the Applicant, A.B., and

To the Respondents
[*if any, naming them*].

FORM 9.

Notice by Respondent Admitting Liability, and Submitting to an Award for Payment of a Weekly Sum, or Paying Money into Court.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, admit their liability to pay compensation in the above-mentioned matter.

And they hereby submit to an award for payment by them to the applicant A.B., of the weekly sum of such weekly payment to commence as from the day of and to continue during the total or partial incapacity of the said A.B. for work, or until the same shall be ended, diminished, increased or redeemed in accordance with the provisions of the above-mentioned Act.

And for payment by them to the said A.B. forthwith after the award of the amount of such weekly payments calculated from the day of until the first Saturday [*or other usual pay day*] after the date of the award, and for the payment thereafter of

the said sum of to the said A.B. on Saturday [*or other usual pay day*] in every week.

[*Or*, And the said C.D. & Co., Limited, herewith pay into Court the sum of £ in satisfaction of such liability.]

Dated this day of

(Signed)

Solicitors for the Respondents,
C.D. & Co., Limited.

To the Registrar of the Court, and

To the Applicant, A.B., and

To the Respondents
[*if any, naming them*].

FORM 10.

Notice of Filing of Submission to an Award.

[*Title as in Request for Arbitration.*]

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, have this day filed with me a notice (copy of which is sent herewith) that they admit their liability to pay compensation in the above-mentioned matter and submit to an award for payment by them to you of the weekly sum of .

If you elect to accept such weekly sum in satisfaction of your claim, you must send to the registrar of this Court, and to the said C.D. & Co., Limited, a written notice forthwith by post, or leave such notice at the office of the registrar, and at the residence or place of business of the said C.D. & Co., Limited.

If you send such notice, the Judge of this Court will, on application made to him, make an award directing payment of such weekly sum to you, and you will be liable to no further costs.

In default of such notice, the arbitration will be proceeded with; and if no greater weekly payment is awarded to you, you will be liable to be ordered to pay the costs incurred by the respondents subsequent to the receipt by you of this notice.

Dated this day of

To the Applicant, A.B. Registrar of the Court.

FORM 11.

Notice of Payment into Court.

[*Title as in Request for Arbitration.*]

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, have this day filed with me a notice that they admit their liability to pay compensa-

tion in the above-mentioned matter, and they have paid into Court the sum of £ in satisfaction of such liability.

If you are willing to accept the sum so paid into Court in satisfaction of the compensation payable in the above-mentioned matter, you must send to the registrar of this Court, and to the said C.D. & Co., Limited, and to the other respondents [*or, where this notice is sent to a respondent*, to the applicant and the other respondents], a written notice forthwith by post, or leave such notice at the office of the registrar, and at the residence or place of business of the said C.D. & Co., Limited, and at the residence or place of business of each of the other respondents [*or* of the applicant and each of the other respondents].

If you and all the other respondents [*or*, If you and the applicant and all the other respondents] send such notice, and agree as to the apportionment and application of the said sum of £ , the Judge of this Court will, on application made to him, make an award for such apportionment and application, and you will be liable to no further costs.

If you and all the other respondents [*or*, If you and the applicant and all the other respondents] send such notice, but do not agree as to the apportionment and application of the said sum of £ , the arbitration will be proceeded with as between you and such other respondents [*or*, as between the applicant and yourself and such other respondents].

In default of such notice being sent by you and all the other respondents [*or*, by the applicant and yourself and all the other respondents], the arbitration will be proceeded with: and if no greater amount than the said sum of £ is awarded as compensation, the parties who do not send such notice will be liable to be ordered to pay the costs incurred by the respondents, C.D. & Co., Limited, subsequent to the receipt by such parties of this notice, and also any costs incurred subsequent to the receipt of this notice by any parties who send notice of their willingness to accept the said sum of £ in satisfaction of the compensation payable in the above-mentioned matter.

Dated this day of

To the Applicant, A.B., Registrar of the Court.

[*or* To the Respondent, G.H.]

[*or as the case may be*]

FORM 12.

Notice of Acceptance of Weekly Sum offered, or of Willingness to accept Sum paid into Court.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the applicant, A.B. accepts the weekly sum offered by the respondents, C.D. & Co., Limited, in satisfaction of his claim in the above-mentioned matter [*or*, that the applicant E.F. [*or*, the respondent G.H.] is willing to accept the sum of £ paid into Court by the respondents, C.D. & Co., Limited, in satisfaction of the compensation payable in the above-mentioned matter].

But the applicant [*or* the said respondent, G.H.] will apply to the Judge to include in his award an order directing the said respondents, C.D. & Co., Limited, to pay the costs properly incurred by the applicant [*or* the said respondent G.H.] before the receipt of notice of the offer of the said weekly sum [*or* of notice of payment of the said sum of £ into Court].

Dated this day of

(Signed)

Applicant,

Or

To the Registrar of the Court, and Respondent.

To the Respondents, C.D. & Co., Limited, and

To the Applicant, A.B., and

To the Respondents [*naming them*].

FORM 13.

Notice by Respondent to Third Parties.

[*Heading as in Request for Arbitration.*]

To Mr. , of (*address and description*).

TAKE NOTICE—That A.B. of, &c., , has filed a request for arbitration (a copy whereof is hereto annexed) as to the amount of compensation payable by the respondents, C.D. & Co., Limited, to the said A.B. under the said Act in respect of personal injury caused to the said A.B. by accident arising out of and in the course of his employment.

The respondents, C.D. & Co., Limited, claim to be indemnified by you against their liability to pay such compensation, on the ground that at the time of the injury in respect of which compensation is claimed the said A.B. was not immediately employed by the said C.D. & Co., Limited, but was employed by you in the execution of work in respect of which the said C.D. & Co., Limited, had contracted with you for the execution thereof by or under you, and that you would, independently of section 4 of the said Act, have been liable to pay compensation in respect of such injury.

[*Or* on the ground that the injury for which compensation is claimed was caused under circumstances creating a legal liability on your part to pay damages in respect thereof]

[*or as the case may be.*]

And take notice, that if you wish to dispute the applicant's claim as against the respondents, C.D. & Co., Limited, you must appear before the Judge [*or* arbitrator] at the time and place mentioned in the notice a copy of which is hereunto annexed.

In default of your so appearing you will not be entitled in any future proceedings between the respondents, C.D. & Co., Limited, and yourself to dispute the validity of the award made in the said arbitration as to any matter which the Judge [*or* arbitrator] has jurisdiction to decide in such arbitration as between the applicant and the respondents C.D. & Co., Limited, whether such award is made by consent or otherwise.

Dated this day of

(Signed) C.D. & Co., LIMITED,
By
Secretary.

To

Of

[*Or*
Solicitors for the Respondents,
C.D. & Co., Limited.]

FORM 14.

Award.

(i.) *In Case of Application by Workman.*

[*Heading as in Request for Arbitration.*]

Having duly considered the matters submitted to me, I do hereby make my award as follows:

1. I order that the respondents, C.D. & Co., Limited, do

pay to the applicant, A.B., the weekly sum of as compensation for personal injury caused to the said A.B. on the day of , by accident arising out of and in the course of his employment as a workman employed by the said C.D. & Co. in [*state nature of employment*] such weekly payment to commence as from the day of , and to continue during the total or partial incapacity of the said A.B. for work, or until the same shall be ended, diminished, increased, or redeemed in accordance with the provisions of the above-mentioned Act.

2. And I order that the said C.D. & Co. do forthwith pay to the said A.B. the sum of £ , being the amount of such weekly payments calculated from the day of until the day of [*the first Saturday or other usual pay day after the date of the award*], and do hereafter pay the said sum of to the said A.B. on Saturday [*or other usual pay day*] in every week.

3. And I order that the said C.D. & Co. do pay to the registrar of this Court, for the use of the applicant, his costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under column of the scales of costs in use in the County Courts, and to be paid by the said C.D. and Co. to the registrar within 14 days from the date of the certificate of the result of such taxation.

Dated this day of

Judge [*or* Arbitrator].

(ii.) *In Case of Application by Dependants.*

[*Heading as in Request for Arbitration.*]

Having duly considered the matters submitted to me, I do hereby make my award as follows:

1. I order that the respondents, C.D. & Co., Limited, do pay the sum of £ to the dependants of A.B., late of , deceased, as compensation for the injury resulting to such dependants from the death of the said A.B. , which took place on the day of , from injury caused to the said A.B. on the day of , by accident arising out of and in the course of his employment as a workman employed by the said C.D. & Co., Limited, in [*state nature of employment*].

2. And I declare that the persons hereinafter named are entitled to share in such compensation as dependants of the said A.B. , that is to say, J.B. the widow of the said A.B. and K.B. an infant daughter of the said A.B.

3. And I declare that the respondent G.B. , the father of

the said A.B. , is not entitled to share in such compensation as a dependant of the said A.B.

4. And I order that the said sum of £ be apportioned between the said J.B. and K.B. in the proportions following, that is to say:

I apportion the sum of £ to or for the benefit of the said J.B., and the sum of £ to or for the benefit of the said K.B.

5. And I order that the said C.D. & Co., Limited, do pay the said sum of £ to the applicant, E.F., the legal personal representative of the said A.B. [*or if no legal personal representative*, to the registrar of this Court,] for the use of the said J.B. within 14 days from the date of this award, and that the said C.D. & Co., Limited, do within the same period pay the said sum of £ apportioned to or for the benefit of the said K.B. to the registrar of this Court.

6. And I order that the said last-mentioned sum be invested by the registrar in his name in the Post Office Savings Bank for the benefit of the said K.B., and that the interest arising from such investment be from time to time, until further order, paid to the said J.B. to be by her applied for the maintenance, education, or benefit of the said K.B.

7. And I order that the said C.D. and Co., Limited, do pay to the registrar of this Court, for the use of the applicants, their costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under column of the scales of costs in use in the County Courts, and to be paid by the said C.D. & Co., Limited, to the registrar within 14 days from the date of the certificate of the result of such taxation.

[*Add directions (if any given) as to costs occasioned by claim of person claiming as a dependant whose claim is disallowed.*]

Dated this day of

Judge [*or* Arbitrator].

(iii.) *In Case of Application by Person to whom Expenses of Medical Attendance or Burial are due.*

[*Heading as in Request for Arbitration.*]

Having duly considered the matters submitted to me, I do hereby make my award as follows:

1. I order that the respondents, C.D. & Co., Limited, do pay the sum of £10 for or towards the expenses of medical attendance on and the burial of A.B., late of , deceased, who

died on the day of from injury caused on the day of by accident arising out of and in the course of the employment of the said A.B. as a workman employed by the said C.D. & Co., Limited, in [*state nature of employment*].

2. And I declare that the persons hereinafter named are entitled to share in such compensation, that is to say:

The applicant, E.F., in respect of charges amounting to £ , due to him for medical attendance on the said A.B., and the respondent, G.H., in respect of charges amounting to £ , due to him for the burial of the said A.B.

3. And I order that the respondents, C.D. & Co., Limited, do pay the said sum of £10 to the registrar of this Court within 14 days from the date of this award, and that the said sum of £10 be apportioned between and paid to the said E.F. and G.H. in proportion to the amounts due to them respectively as aforesaid.

4. And I order that the said C.D. & Co., Limited, do pay to the registrar of this Court for the use of the applicant, E.F., and the respondent, G.H., their respective costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under column of the scales of costs in use in the County Courts, and to be paid by the said C.D. & Co., Limited, to the registrar within 14 days from the date of the certificate of the result of such taxation.

Dated this day of

Judge [*or* Arbitrator].

[*Note.*—The above forms will serve as guides for framing awards in other cases of arbitration.]

FORM 15.

Notice of Day upon which Special Case will be heard.

In the County Court of , holden at

[*Heading as in Special Case.*]

TAKE NOTICE that the Judge of this Court will hear the special case stated by Mr. , the arbitrator in the above-named matter, at a Court to be holden at , on the day of at the hour of in the noon: and that if you do not attend in person or by your solicitor at the place and time

above mentioned, such order will be made and proceedings taken as the Judge may think just.

You may obtain a copy of the case upon application at my office and upon prepayment of the costs of such copy.

Dated this day of

Registrar of the Court.

To [*The Applicant and Respondents.*]

FORM 16.

Form of Memorandum under Paragraph 8 of Schedule II.

To the Registrar of the County Court of , holden at

In the matter of the Workmen's Compensation Act, 1897,

and

In the matter of an Arbitration between

A.B. of, &c., Applicant.

and

C.D. & Co., Limited,

of, &c. Respondents.

[*or, where the matter has been decided by agreement without arbitration*

In the matter of an Agreement between

A.B. of, &c.,

and

C.D. & Co., Limited,

of, &c. .]

Be it remembered, that on the day of personal injury was caused to the said A.B. of, &c., who was a workman employed by C.D. & Co., Limited, of in [*state nature of employment*] , by accident arising out of and in the course of his employment:

And that on the day of the following agreement was come to by and between the said A.B. and the said C.D. & Co., Limited, that is to say :

[*or*, And that on the day of the following decision was given by a committee representative of the said C.D. & Co., Limited, and their workmen, having power to settle matters under

the above-mentioned Act in the case of the said C.D. & Co., Limited, and their workmen; that is to say:]

[*or*, And that on the day of the following award was made and given by me, the undersigned , being an arbitrator agreed on by the said A.B. and the said C.D. & Co., Limited; that is to say:]

[*Here set out copy of agreement, decision, or award.*]

[*or, where death resulted from the accident,*

Be it remembered, that on the day of personal injury was caused to A.B. late of deceased, who was a workman employed by C.D. & Co., Limited, of, &c., in [*state nature of employment*] by accident arising out of and in the course of his employment, and that on the day of the said A.B. died as the result of such injury:

And that on the day of the following agreement was come to by and between C.B. G.B. &c., the dependants of the said A.B. within the meaning of the above-mentioned Act, and the said C.D. & Co., Limited, that is to say:]

[*or*, And that on the day of the following decision was given by a committee representative of the said C.D. & Co., Limited, and their workmen, having power to settle matters under the above-mentioned Act in the case of the said C.D. & Co., Limited, and their workmen; that is to say:]

[*or*, And that on the day of the following award was made and given by me, the undersigned, being an arbitrator agreed on by C.B. G.B. &c., , the dependants on the said A.B. within the meaning of the above-mentioned Act, and the said C.D. & Co., Limited, ; that is to say:]

[*Here set out copy of agreement, decision, or award.*]

A copy of the report of Mr. , a medical referee appointed to report in the above-mentioned matter, is hereunto annexed [*add, if so*, the said Mr. attended the arbitration on the day of].

You are hereby requested to record this memorandum, pursuant to paragraph 8 of the Second Schedule to the above-mentioned Act.

Dated this day of

[*To be signed—*

In the case of an agreement, by the parties or some or one of them, or by their or his solicitor on their or his behalf:

In the case of a decision by a committee, by the chairman and secretary on behalf of the committee:

In the case of an award, by the arbitrator.]

FORM 17.

Inquiry as to Genuineness of Memorandum.

In the County Court of , holden at

[*Heading as in Memorandum.*]

TAKE NOTICE, that a memorandum, copy of which is hereto annexed, has been sent to me for registration.

Such memorandum, which appears to affect you, is not signed by you or on your behalf.

I have therefore to request you to inform me in due course of post, whether you admit the genuineness of the memorandum, or whether you dispute it, and if so, in what particulars.

If you do not inform me in due course of post that you dispute the genuineness of the memorandum, it will be recorded without further inquiry, and will be enforceable accordingly.

If you dispute its genuineness, it will not be recorded, except with your consent in writing, or by order of the Judge of this Court.

Dated this day of

Registrar of the Court.

To

FORM 18.

Notice Disputing Memorandum.

In the County Court of , holden at

[*Heading as in Memorandum.*]

TAKE NOTICE, that the undersigned C.D. & Co., of &c., dispute the genuineness of the memorandum sent to you for registration in the above-mentioned matter in the following particulars:

[*here state particulars.*]

Dated this day of .

C.D. & Co., Limited,

by

Secretary.

[*Or* ,

Solicitors for C.D. & Co., Limited.]

To

The Registrar.

FORM 19.

Notice that Genuineness of Memorandum is disputed.

[*Heading as in last Form.*]

TAKE NOTICE, that the genuineness of the memorandum in the above-mentioned matter left with [*or* sent to] me by you is disputed by of , a party affected by such memorandum, but who has not signed the same, in the following particulars:

[*here state particulars of dispute.*]

The memorandum will therefore not be recorded, except with the consent in writing of the said , or by order of the Judge of this Court.

Dated this day of

Registrar of the Court.

To

FORM 20.

Notice of Application for Registration of Memorandum or for Rectification of Register.

In the County Court of , holden at

[*Title as in the Memorandum.*]

TAKE NOTICE, that I intend to apply to the Judge at on the day of , at the hour of o'clock in the noon [*in case of notice by solicitor*, on behalf of of] for an order for the registration of the memorandum sent to the registrar in the above-mentioned matter [*or* for an order for the rectification of the memorandum recorded in the above-mentioned matter] by [*state particulars of rectification applied for*], and for consequential directions and for costs.

Dated this day of

Applicant.

[*Or* Applicant's Solicitor.]

To the Registrar of the Court
and to
and to Messrs.
(his [*or* their] solicitors).

FORM 21.

Notice of Application for Determination of Amount of Costs under Paragraph 12 *of Schedule II. to the Act.*

In the County Court of , holden at

[*Title as in Award or Memorandum.*]

TAKE NOTICE, that I intend to apply to the Judge at on the day of at the hour of o'clock in the noon, to determine the amount of costs to be paid to me as solicitor [*or* agent] for you, A.B. in the above-mentioned matter; and for an order declaring that I am entitled to a lien for such amount on or to deduct such amount from the sum awarded as compensation to you the said A.B. in the above-mentioned matter, and for consequential directions.

Dated this day of

Applicant.

To the Registrar of the Court,
and to
A.B.
of

FORM 22.

Form of Certificate under Section 1, *Sub-section* 4.

In the County Court of , holden at

No. of Plaint

Between
A.B.,
of (*address*)
(*description*) Plaintiff.

and

C.D. & Co., Limited,
of (*address*)
(*description*) Defendants.

And in the matter of the Workmen's Compensation Act, 1897.

I hereby certify that on the day of the above-named plaintiff commenced the above-named action against the above-named defendants claiming

[*here state claim of plaintiff in action.*]

And that on the trial of the said action on the day of it was determined that the injury in respect of which the plaintiff claimed damages in the said action was one for which

the defendants were not liable in the said action, but that such defendants would have been liable to pay compensation in respect of such injury under the above-mentioned Act;

And that thereupon the said action was dismissed, but the Court, on the request of the plaintiff, proceeded to assess the compensation to which the defendants would have been liable to pay under the said Act.

And that the Court assessed such compensation at the sum of £ and directed [*state directions given as to payment of compensation, and directions, if any given, as to costs, and as to the deduction from the compensation of any costs which in the judgment of the Court were caused by the plaintiff bringing the action instead of proceeding under the Act*].

Dated this day of

Registrar of the Court.

FORM 23.

Execution on Award or Memorandum or Certificate.

In the County Court of , holden at

[*Title as in Award, Memorandum, or Certificate.*]

Whereas on the day of an award was made in the above-mentioned matter by the Judge [*or* by Mr. , an arbitrator appointed by the Judge] whereby it was ordered [*state operative parts of award*]

[*or* whereas on the day of a memorandum was recorded in this Court of an agreement [*or* decision *or* award] come to [*or* given *or* made] in the above-mentioned matter, whereby it was agreed [*or* ordered] [*state operative parts of agreement, decision or award*]

[*or* whereas on the day of a memorandum was recorded in this Court of a certificate given by the County Court of , holden at to the effect that [*state operative parts of certificate*]:

And whereas default has been made in payment of the sum of £ payable by the said into Court [*or* to the said A.B.] according to the said award [*or* memorandum *or* certificate];

These are therefore [*as in ordinary executions*].

[*This form to be adapted to the circumstances of the case where execution is ordered to issue under Rule* 47, *paragraph* (*e*) *for costs.*]

FORM 23A.

Judgment Summons on Award, Memorandum, or Certificate.

In the County Court of holden at

[*Title as in Award, Memorandum, or Certificate.*]

Whereas on the day of an award was made in the above-mentioned matter by the Judge [*or* by Mr. , an arbitrator appointed by the Judge], whereby it was ordered [*state operative parts of award*]:

[*or* whereas on the day of a memorandum was recorded in this Court of an agreement [*or* decision *or* award] come to [*or* given *or* made] in the above-mentioned matter whereby it was agreed [*or* ordered] [*state operative parts of agreement, decision, or award*]:

[*or* whereas on the day of a memorandum was recorded in this Court of a certificate given by the County Court of holden at to the effect that [*state operative parts of certificate*]:

And whereas default has been made in payment of the sum of £ payable by you the above-named into Court [*or* to the said A.B.] according to the said award [*or* memorandum *or* certificate]:

You the said are therefore hereby summoned to appear personally in this Court at [*place where Court holden*] on the day of 19 , at the hour of in the noon, to be examined on oath by the Court touching the means you have or have had since the date of the award [*or* memorandum *or* certificate] to pay the said sum, in payment of which you have made default; and also to show cause why you should not be committed to prison for such default.

Dated this day of 19 .

Registrar.

	£	*s.*	*d.*
Amount in payment of which default has been made			
Cost of this summons			
Total sum due			

NOTE.—*This form to be adapted to the circumstances of the case where a summons is issued under the County Court Rules, Order XXV., Rule* 14*b*, *against a person alleged to be a partner in or sole member of a firm, or to be carrying on business in any name other than his own. If an order of commitment is made it should be according*

to the Form 57 *in the Appendix to the County Court Rules, such form being adapted to the case of default in payment of an amount due under an award, memorandum, or certificate.*

FORM 24.

Notice of Application to stay Proceedings in Arbitration or suspend Weekly Payments under Schedule I., Paragraph 3, *or Paragraph* 11, *and Rule* 50.

[*Heading as in Request for Arbitration, or Award, or Memorandum or Certificate* [*as the case may be*].]

TAKE NOTICE that I intend to apply to the Judge [*or* to Mr. the arbitrator appointed in the above-mentioned matter] at on the day of at the hour of o'clock in the noon, [on behalf of Messrs. C.D. & Co., Limited, of &c.,] for an order staying the proceedings in the above-mentioned arbitration [*or* suspending the weekly payments awarded to you by the above-mentioned award, *or* memorandum *or* certificate] on the ground that you refuse to submit yourself to medical examination as required by me [*or* by the said C.D. & Co., Limited], in accordance with paragraph 3 [*or* paragraph 11] of the First Schedule to the above-mentioned Act [*or* that you obstruct the medical examination required by me [*or* by the said C.D. & Co., Limited,] in accordance with paragraph 3 [*or* paragraph 11] of the the First Schedule to the above-mentioned Act], and for consequential directions, and for costs.

Dated this day of

(Signed) C.D. & Co., Limited,
by Secretary.

To A.B., of
and to Messrs. [*Or*
his Solicitors Solicitors for C.D. & Co., Limited.]

FORM 25.

Affidavit on Summons against Insurers under Section 5 *of the Act.*

In the County Court of , holden at

[*Title as in Award, Memorandum, or Certificate.*]

I, A.B. of [*or* I, E.F., of solicitor to A.B. of] make oath and say as follows:

1. On the day of an award was made in the above-mentioned matter by the Judge [*or* by Mr. an arbitrator

appointed by the Judge] whereby it was ordered [*state operative parts of award*]

[*or* on the day of a memorandum was recorded in this Court of an agreement [*or* decision, *or* award, *or* certificate] come to [*or* given *or* made] in the above-mentioned matter, whereby it was agreed [*or* determined *or* ordered] [*state operative parts of agreement, decision, award, or certificate*].

2. The sum of £ [*or* a weekly payment of from the day of *as the case may be*] still remains due [*or* payable] to me [*or* to the said A.B.] from or by the said C.D. under the said award [*or* memorandum *or* certificate].

3. The said C.D. is [*or* are] entitled to the sum [*or* weekly payment] of from of [*insert name and address of insurers*] in respect of the amount due [*or* payable] to me [*or* to the said A.B.] as aforesaid.

4. [*Here state particulars showing that the employer has become bankrupt, or made a composition or arrangement with his creditors, or, if a company, that the company has commenced to be wound up; stating, in case of an assignment, the names and addresses of the assignees, or in case of bankruptcy, the name and address of the official receiver or other trustee, or, in case of liquidation, the name and address of the provisional or other liquidator, so far as known to the deponent.*]

5. I [*or* the said A.B.] claim [*or* claims] to have by virtue of the said Act a first charge on the sum [*or* weekly payment] to which the said C.D. is [*or* are] entitled from the said [*insurers*] as aforesaid, for the amount so due [*or* payable] to me [*or* him], and claim [*or* claims] that the said may be ordered to pay the said sum, or so much thereof as may be sufficient to satisfy the amount so due to me [*or* the said A.B.] into Court, to be invested or applied for my [*or* his] benefit [*or, in the case of a weekly payment*, that the said may be ordered to pay the said weekly payment to me [*or* him].

Sworn, &c.

FORM 26.

Summons to Insurers.

In the County Court of , holden at

No. of Plaint

[*Title as in Award, or Memorandum, or Certificate.*]

Insurers.

[*Insert here name, address, and description of Insurers.*]

Whereas [*recite award, or memorandum, or certificate, as in affidavit*].

And whereas the said A.B. has filed an affidavit in this Court, stating that the sum of £ [*or* a weekly payment of from the day of [*as the case may be*] still remains due [*or* payable] to him from or by the said C.D. under the said award [*or* memorandum, *or* certificate]:

And that the said C.D. is [*or* are] entitled to the sum [*or* weekly payment] of from you in respect of the amount due or payable to the said A.B. as aforesaid:

And that [*Here repeat allegations in affidavit as to bankruptcy, composition, arrangement, or winding up*].

And that the said A.B. claims by virtue of the said Act to have a first charge on the sum [*or* weekly payment] to which the said C.D. is [*or* are] so entitled from you as aforesaid, and claims that you may be ordered to pay the said sum, or so much thereof as may be sufficient to satisfy the amount so due to the said A.B., into Court, to be invested or applied for his benefit [*or, in the case of a weekly payment*, that you may be ordered to pay the said weekly payment to him]:

You are therefore hereby summoned to appear at a Court to be holden at , on the day of , at o'clock in the noon, to show cause why an order should not be made upon you for the payment into Court of the sum to which the said C.D. is [*or* are] entitled from you as aforesaid or so much thereof as may be sufficient to satisfy the amount so due to the said A.B. [*or* for the payment by you of the said weekly payment to the said A.B.]:

And take notice, that from and after the service of this summons upon you, such sum [*or* weekly payment] is attached to answer the sum [*or* weekly payment] payable to the said A.B. as aforesaid, and that if you shall pay the said sum [*or* weekly payment] to the said C.D. or otherwise dispose of the same you will be liable to be dealt with for contempt.

Dated this day of .

To

[*The Insurers*]. Registrar of the Court.

FORM 27.

Notice to Employer or his Assignee, or to Official Receiver or Trustee in Bankruptcy, or Liquidator, of Issue of Summons to Insurers.

[*Title as in Summons to Insurers.*]

TAKE NOTICE, that a summons, a sealed copy of which is served herewith, has been issued in the above-mentioned matter, and that

the Judge [*or* registrar] of this Court has directed that notice of the issue of such summons shall be given to you.

And Further Take Notice that the hearing of the said summons will be proceeded with at on the day of at o'clock in the noon, and that if you do not attend, either in person or by your solicitor, at the place and time above mentioned, such order will be made and proceedings taken as the Judge may think fit.

Dated this day of

To Registrar of the Court.

[*The Employer or his Assignee, or the Official Receiver or other Trustee in Bankruptcy, or the Provisional or other Liquidator.*]

Form 28.

Order against Insurers.

[*Title as in Summons.*]

Whereas [*recite award or memorandum or certificate, as in affidavit.*]

And whereas the said A.B. having filed an affidavit [*recite affidavit as in summons*] the said were summoned to appear before the Court this day, and to show cause why an order should not be made on them for the payment into Court by them of the sum to which the said C.D. is [*or* are] entitled from them as aforesaid, or so much thereof as might be sufficient to satisfy the amount so due to the said A.B. [*or* for the payment by them of the said weekly payment to the said A.B. .]

Now the said having failed to appear before the Court this day [*or* having appeared before the Court this day and failed to show cause why they should not be ordered to make such payment as aforesaid]

It is ordered that the said do within 14 days from the date of this order pay to the registrar of this Court the sum of £ to which the said C.D. is [*or* are] entitled from them in respect of the amount due to the said A.B. under the said award [*or* memorandum *or* certificate].

[*Or*, It is ordered that the said do within 14 days from the date of this order pay to the registrar of this Court for the use of the said A.B. the sum of £ , being the amount to which the said C.D. is [*or* are] entitled from them in respect of the

weekly sum payable to the said A.B. under the said award [*or* memorandum *or* certificate] from the day of to the day of .

And that the said do thereafter until further order pay to the said A.B. the weekly sum of , being the amount to which the said C.D. is [*or* are] entitled from the said in respect of the weekly sum payable to the said A.B. under the said award [*or* memorandum *or* certificate].

Add Directions as to Investment and Application of Money ordered to be paid into Court, and as to Costs.

FORM 29.

Execution against Insurers.

In the County Court of , holden at

[*Title as in Order against Insurers.*]

Whereas on the day of , it was ordered [*recite operative parts of order against insurers.*]

And whereas default has been made in payment of the sum of £ , payable into Court under the said order [*or* payable to the said A.B. under the said order]:

These are therefore, &c.—[*as in ordinary executions*].

FORM 30.

Register.

The Workmen's Compensation Act, 1897.

Register.

No. of Matter.	Title.	Date of Proceedings.	Nature.
1.	In the matter of arbitration between A.B. of &c., Applicant, and C.D. & Co., Limited, of, &c., Respondents.	Oct. 11, 1898	Request for arbitration filed, and copy sent to Judge.
		Oct. 20, 1898	Appointment of Mr. as arbitrator.
		Oct. 24, 1898	Copy request sent to arbitrator.
		Oct. 28, 1898	Day for arbitration fixed.

REGISTER—*continued.*

No. of Matter.	Title.	Date of Proceedings.	Nature.
		Oct. 28, 1898	Notice of day fixed sent to applicant, and notice with copy request sent to respondents by registered post.
		Nov. 4, 1898	Respondents' answer filed; copies sent to arbitrator and applicant.
		Nov. 6, 1898	Application by applicant for discovery; order made.
		Nov. 12, 1898	Respondents' affidavit filed.
		Nov. 13, 1898	Five subpœnas issued on application of applicant's solicitor.
		Nov. 16, 1898	Arbitration held; Mr. appointed as medical referee to report; further hearing adjourned.
		Nov. 23, 1898	Report of medical referee received and forwarded to arbitrator; notice given to the parties.
		Dec. 13, 1898	Further hearing. Award made as follows (enter minute of award).
		Dec. 20, 1898	Costs of applicant taxed at £ .
		Jan. 3, 1899	£ for costs paid into Court by respondents.
		Jan. 10, 1899	£ for costs paid to applicant's solicitor.
2	In the matter of an agreement between A.B. of and E.F. & Co., Limited, of &c.	Jan. 7, 1899	Memorandum of agreement as to compensation, signed by solicitor of A.B., left to be recorded.
		Jan. 8, 1899	Inquiry as to genuineness sent by post to E.F. & Co., Limited.

REGISTER—*continued.*

No. of Matter.	Title.	Date of Proceedings.	Nature.
		Jan. 10, 1899	Letter received from E.F. & Co., Limited, disputing genuineness.
		Jan. 10, 1899	Notice sent to A.B.'s solicitor, that genuineness is disputed, and that Memorandum will not be recorded without consent in writing of E.F. & Co., Limited, or order of Judge.
		Jan. 15, 1899	Application on behalf of A.B., that Memorandum be recorded.
		Jan. 31, 1899	Application heard, and order made that Memorandum be recorded with alterations.
		Feb. 2, 1899	Memorandum recorded as follows [set out Memorandum].
		Feb. 13, 1899	Costs of A.B. taxed and allowed at £ .
		Mar. 1, 1899	Execution issued for costs.
			&c., &c., &c.

We, Alfred Martineau, Henry J. Stonor, Richard Harington, William L. Selfe, and William Cecil Smyly, being the five judges of the County Courts appointed for the making of Rules under section one hundred and sixty-four of the County Courts Act, 1888, having made the foregoing Rules of Court, pursuant to paragraph ten of the Second Schedule to the Workmen's Compensation Act, 1897, do hereby certify the same under our hands, and submit them to the Lord Chancellor accordingly.

Alfred Martineau.
Henry J. Stonor.
Richard Harington.
Wm. L. Selfe.
William Cecil Smyly.

I allow these Rules,

Halsbury, C.

The 27th of May, 1898.

APPENDIX B.

RULES OF THE SUPREME COURT, JULY, 1898.

ORDER LIV. RULE 1A.

1*a*. An application for the appointment of a new arbitrator under paragraph 7 of the second schedule of "The Workmen's Compensation Act, 1897," shall be made by summons.

ORDER LVIII. RULE 20.

Appeals under Workmen's Compensation Act, 1897, 60 & 61 *Vict. c.* 37, *sched.* 2, *par.* 4.

20. The following provisions shall apply to appeals to the Court of Appeal from decisions of judges of the County Courts on questions of law under the Workmen's Compensation Act, 1897 :

(*a*) Every such appeal shall be by notice of motion in accordance with Order LIV. Rule 10; and such notice of motion shall be served, and the appeal set down under Order LVIII. Rule 8, within the time limited by Order LIX. Rule 12.

(*b*) It shall be the duty of the party appealing to apply to the judge of the County Court for a signed copy of the note made by him of any question of law raised before him, and of the facts in evidence in relation thereto, and of his decision thereon, and

of his decision on the question or matter submitted to him, and to furnish such copy for the use of the Court of Appeal; and such copy shall be used and received at the hearing of the appeal. If such notes are not produced the Court of Appeal shall have power to hear and determine the appeal upon any other evidence or statement of what occurred before the judge of the County Court which the Court of Appeal may deem sufficient.

(*c*) Order LIX. Rules 14 and 16, shall apply to any such appeal, with the substitution of the Court of Appeal for the High Court.

(*d*) Subject to the foregoing provisions, the rules for the time being in force with respect to appeals from the High Court to the Court of Appeal shall, so far as practicable, apply to and govern appeals under the said Act to the Court of Appeal.

APPENDIX C.

WORKMEN'S COMPENSATION ACT, 1897. MEDICAL REFEREES.

REGULATIONS, DATED MAY 2, 1898, MADE BY THE SECRETARY OF STATE AND THE TREASURY AS TO THE APPOINTMENT AND PAYMENT OF MEDICAL REFEREES IN ENGLAND AND WALES.

I, the Right Honourable Sir Matthew White Ridley, Baronet, one of Her Majesty's Principal Secretaries of State, and We, the Lords Commissioners of Her Majesty's Treasury, in pursuance of the power conferred on us by the Workmen's Compensation Act, 1897, Schedule II., paragraph (13), hereby make the following regulations :—

Definitions.

1. In these regulations—

(i.) "Medical Referee" means a legally qualified medical practitioner appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1897. Sched. II. (13).

(ii.) "Reference" means the appointment of a medical referee by a committee, arbitrator or judge to report on any matter material to any question arising in an arbitration under the Workmen's Compensation Act, 1897. Sched. II. (13).

Sched. II. (1). (iii.) "Committee" means a committee representative of an employer and his workmen, with power to settle matters under the Workmen's Compensation Act, 1897, in the case of the employer and workmen.

Sched. II. (2). (iv.) "Agreed Arbitrator" means a single arbitrator agreed on by the parties to settle any matter which under the Workmen's Compensation Act, 1897, is to be settled by arbitration.

Sched. II. (2). (v.) "Appointed Arbitrator" means a single arbitrator appointed by the judge.

(vi.) "Judge" means County Court Judge.

Sched. II. (9). (vii.) The words "district in which the case arises" mean the county court district in which all the parties concerned reside, or, if they reside in different districts, the district in which the accident occurred, subject to any transfer made under rules of court.

Conditions of Reference.

2. Before making any reference, the committee, arbitrator, or judge shall be satisfied, after hearing all medical evidence tendered by either side, that such evidence is either conflicting or insufficient on some matter which seems material to a question arising in the arbitration, and that it is desirable to obtain a report from a medical referee on such matter.

Form and Mode of Reference.

3. Every reference shall be made in writing and shall state the matter on which the report of the medical referee is required, and the question arising in the arbitration to which such matter seems to be material. Such reference

Form A. shall be in accordance with the form prescribed in the schedule to these regulations, or as near thereto as may be.

The reference shall be accompanied by a general statement of the medical evidence given on behalf of the

parties; and if such evidence has been given before a committee or an agreed arbitrator, each medical witness shall sign the statement of his evidence, and may add any necessary explanation or correction.

4. On making the reference to the medical referee, the committee, arbitrator or judge shall make an order in the form prescribed in the schedule, directing the injured workman to submit himself for examination by the medical referee. Before making such order they shall inquire whether he is in a fit condition to travel for the purpose of examination, and if satisfied that he is in a fit condition they shall by the same order direct him to attend at such time and place as the referee may fix. Form B.

It shall be the duty of the injured workman to obey any such order.

If the committee, arbitrator or judge is satisfied that the workman is not in a fit condition to travel, they shall so state in the reference.

5. The reference shall be signed, if made by a committee, by the chairman and secretary of the committee; if made by an agreed arbitrator, by the arbitrator; if made by a judge or an appointed arbitrator, by the judge or arbitrator, or by the registrar of the county court in which the arbitration is pending.

6. Where there has been a previous reference in any case, any subsequent reference in the same case shall, if possible, be accompanied by the previous report of the medical referee.

7. Where the reference is made by a committee or agreed arbitrator, it shall be forwarded to the registrar of the county court of the district in which the case arises.

Selection of Medical Referee.

8.—(1.) In the case of a reference by a committee or agreed arbitrator the medical referee shall be one of those appointed by the Secretary of State for the County Court circuit which includes the district in which the case arises, and shall, except as provided in Regulation 10,

(*a*) If the circuit has been sub-divided and medical referees have been appointed for each sub-division, be one of those appointed for the sub-division which includes the district in which the case arises;

(*b*) If a rota has been established either for the circuit or for a sub-division of the circuit, be selected in accordance with the rota.

(2.) In the case of a reference by a judge or by an appointed arbitrator, the medical referee shall be one of those appointed by the Secretary of State for the circuit.

9. It shall be competent for a committee or an agreed arbitrator, without naming a medical referee, to address the reference in general terms to "one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1897."

10. Where there has been a previous reference in any case, any subsequent reference in the same case shall, if possible, be made to the same referee.

Duties of Registrar.

11.—(1.) In the case of a reference by a committee or agreed arbitrator, the registrar on receiving the reference—

(*a*) Shall see that the reference is in accordance with these regulations, and if it is not shall return it for amendment;

(*b*) Shall, if no medical referee is named in the reference, insert the name of the medical referee proper to be appointed;

(*c*) Shall, when the reference is in accordance with these regulations, countersign and seal it, and forward it forthwith to the medical referee.

(2.) In the case of a reference by a judge or an appointed arbitrator, the registrar of the court in which the arbitration is pending shall sign (or countersign) and seal it, and forward it forthwith to the medical referee.

Form D. 12. The registrar shall keep a record in the form prescribed in the schedule to these regulations of all references

forwarded by him, and shall send the same to the Secretary of State at the end of each quarter.

13. The registrar, on receiving a report from a medical referee under Regulation 17, shall forthwith file a copy at the court and transmit the report to the committee, arbitrator or judge by whom the reference was made.

If the committee, arbitrator, or judge shall direct that the parties be at liberty to inspect the report, the registrar shall on receiving notice of such direction permit such inspection to be made during office hours, and shall on the application and at the cost of any party furnish him with a copy of the report or allow him to take a copy thereof.

14. When a medical referee attends under Regulation 19, the registrar shall certify in the record of references which he is required to keep under Regulation 12 that the attendance was at the special request of the judge or appointed arbitrator.

Report of Medical Referee.

15. The medical referee shall not accept any reference unless signed by the judge, appointed arbitrator, or registrar, and sealed with the seal of the county court.

16. The medical referee shall, on receipt of a reference duly signed, appoint a time and, in cases where the injured workman is able to travel, a place for the examination of the workman, and shall send him notice accordingly. Form C.

17. The medical referee shall give his report in writing, and shall forward it to the registrar from whom he received the reference.

18. The committee, arbitrator, or judge may, by request signed and forwarded in the same manner as the reference, remit the report to the medical referee for further statement on any matter to be specified in such request.

Personal Attendance of Medical Referee.

19. In any case of special difficulty the judge, or appointed arbitrator, may require the attendance of the

medical referee at any proceedings in the arbitration subsequent to the receipt of the report, at a date and hour to be arranged, and the medical referee shall attend accordingly, but this regulation shall not authorise the medical referee being called as a witness.

Fees.

20. The following shall be the scale of fees to be paid to the medical referees :—

(i.) For a first reference, to include examination of the injured workman and written report	2 guineas.
(ii.) For a further statement under Regulation 18 on any matter not covered by the original reference	1 guinea.
(iii.) For a second or subsequent reference to the same referee in a further arbitration on the same case, to include examination, if necessary, and written report	1 guinea.
(iv.) Where a medical referee attends at the request of the county court judge or appointed arbitrator, for such attendance	3 guineas.

(v.) Where in order to examine the injured workman or to attend on the county court judge or arbitrator the medical referee is compelled to travel to a place distant more than 2 miles from his residence or such other centre as may be prescribed by the Secretary of State, in addition to the above fees—5*s.* for each mile distant from such residence or centre.

Form E. 21. The medical referee shall send to the Home Office at the end of each quarter a statement, in the form prescribed in the schedule to these regulations, of the fees due to him for the quarter under these regulations.

22. In cases where a claim is made under Regulation 20 (v.) in respect of an examination of an injured workman, the medical referee, in submitting his quarterly statement under Regulation 21, shall certify the distance of the place where the examination was made from his residence or other prescribed centre.

23. These regulations shall come into force on the 1st day of July, 1898, and shall apply to England and Wales.

M. W. Ridley,
One of Her Majesty's Principal Secretaries of State.

H. T. Anstruther,
W. H. Fisher,
Two of the Lords Commissioners of Her Majesty's Treasury.

2*nd May*, 1898.

SCHEDULE.

(FORM A.)

Reference to a Medical Referee.

In the matter of the Workmen's Compensation Act, 1897,
and
In the matter of an Arbitration between—
A.B.
Address
Description Applicant,
and
C.D.
Address
Description Respondent.

As the case may be

(*a*) We, a committee representative of and his workmen, and empowered to arbitrate in the matter arising under the Workmen's Compensation Act between A.B. and C.D.;

(*b*) I, , an arbitrator agreed upon by A.B. and C.D. to arbitrate in the matter arising between them under the Workmen's Compensation Act, 1897;

(*c*) I, , Judge of County Courts;

(*d*) I, , arbitrator appointed by a Judge of County Courts,

having heard the evidence tendered by both parties, hereby certify that in our [*or* my] opinion the medical evidence given before us [*or* me] is conflicting [*or* insufficient] on a matter which seems to us [*or* me] to be material to a question arising in the above-mentioned arbitration, and that it is desirable to obtain a report from a medical referee on such matter, as follows:—

(A) On the day of personal injury was [*or* is alleged to have been] caused to* by accident arising out of and in the course of his employment, under the following circumstances:—

† Here state the facts of the accident as ascertained from the evidence.

†

(B) The matter on which we are [*or* I am] satisfied that it is desirable to obtain a report is—

(C) Such matter seems to be material to the following question arising in the arbitration, viz.:—

‡ The name may, under Regulation 9, be left in blank to be inserted by the registrar.

§ Insert name of injured workman.

We [*or* I] therefore appoint ‡ one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1897, to examine the said § and to report to us [*or* me] on the matter specified above.

A statement of the medical evidence given before us [*or* me] is appended.

We are [*or* I am] satisfied that the said § who is now at , is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as shall be fixed by the referee; *or* does not appear to be in a fit condition to travel for the purpose of being examined.

The referee is requested to forward his report to—

The Registrar,
County Court Office,

on or before the day of .

Dated this day of .

(Signed)
*
or On behalf of the Committee
Chairman / *Secretary* } *of Committee.*

Signature of Registrar and Seal of Court.

* For signature of judge or arbitrator.

A previous reference was made to a medical referee in this case on the , 189 , and a copy of the report then given is attached.

(Form B.)

Order on injured Workman to submit himself for Examination by Medical Referee.

(*Title as in reference.*)

To A.B. *Address.*

of *Description.*

Take Notice—

That the Committee [*or* arbitrator, *or* judge] have [*or* has] appointed one of the medical referees under the Workmen's Compensation Act, 1897, to examine you for the purposes of the above-mentioned arbitration, and to report to them [*or* him].

You are hereby required to submit yourself for examination by such referee,† and to attend for that purpose at such time and place as may be fixed by him.

† Strike out from "and to attend" when injured workman does not appear to be in a fit condition to travel.

Dated this day of .

(*To be signed in the same manner as reference.*)

(Form C.)

Notice by Medical Referee to injured Workman.

Workmen's Compensation Act, 1897.

To A.B.

I hereby give you notice that I have been appointed to examine and report on your case under the above-named Act, and that I propose to make such examination at on the day of at o'clock.

(Signed) *Medical Referee.*

(FORM D.)

Record of References to be kept by Registrar.

County Court Circuit . District . Name of Registrar .
For quarter ended .

Number of Reference.	Names of Parties.	Workman's Employment.	Date on which Reference received or made.	By whom made.*	Whether Workman directed to attend on Medical Referee, or not.	Medical Referee appointed.	Date and Number of previous Reference in same Case, if any.

* Here say whether committee, agreed arbitrator, county court judge, or appointed arbitrator.

† Endorsement to be made on back of form.

† I hereby certify that the medical referee attended at , on , with respect to reference No. , at the special request of .

(FORM E.)

Medical Referee's Statement of Fees.

Number.	Names of Parties.	Date on which Reference received.	Registrar from whom received.	Date and Place of Examination.	Date on which Report sent.	Date of attendance, if any, on Judge or Arbitrator.	Amount of Fees under each of the headings in Regulation 20.				
							(i.)	(ii.)	(iii.)	(iv.)	(v.)
							£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
1.	A. B. and C. D.	10 July, 1898.									
2.	E. F. and G. H.	6 Sept., 1898.									
							Total ...	£	s.	d.	

‡ Endorsement to be made on back of statement.

‡ I hereby certify that I examined the applicant on , at , which is distant miles from my residence or prescribed centre.

Signed .

APPENDIX D.

Forms of Notice of Accident.

SIR,

I hereby give you notice for and on behalf of A.B., of , that, on the day of , the said A.B., a workman then in your employ, was injured at a house in the course of erection by you at , by a fall from a ladder.

Yours faithfully,

(Signed) C.D.

Dated the day of .

To Mr. E.F., of ,

Builder.

SIRS,

I hereby give you notice, for and on behalf of A.B., of , that, on the day of , his father, J.B., of , a workman then in your employ, was knocked down and injured by a train on your railway, of which injury he has since died.

Yours faithfully,

C.D.

Dated the day of .

To the E. & F. Railway Company.

SIRS,

I hereby give you notice for and on behalf of A.B., of , that, on the day of , the said A.B., a carman then in the employ of Messrs. C. and D. of , cartage contractors, was injured by a kick from his horse while delivering goods at your factory at .

Yours faithfully,

E.F.

Dated the day of .

To the G.H. Company, Limited,

of [*the registered office of the company*],

Manufacturers.

APPENDIX E.

EMPLOYERS LIABILITY ACT, 1880
(43 & 44 Vict. c. 42).

An Act to extend and regulate the Liability of Employers to make Compensation for Personal Injuries suffered by Workmen in their service.

[7th September, 1880.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Amendment of law.

1. Where after the commencement of this Act personal injury is caused to a workman

(1.) By reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer; or

(2.) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such superintendence; or

(3.) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed; or

(4.) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or byelaws of the employer, or in obedience to particular instructions given by

any person delegated with the authority of the employer in that behalf; or

(5.) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway,

the workman, or in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer, nor engaged in his work.

Exceptions to amendment of law.

2. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases; that is to say,

(1.) Under sub-section one of section one, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition.

(2.) Under sub-section four of section one, unless the injury resulted from some impropriety or defect in the rules, byelaws, or instructions therein mentioned; provided that where a rule or byelaw has been approved or has been accepted as a proper rule or byelaw by one of Her Majesty's Principal Secretaries of State, or by the Board of Trade or any other department of the Government, under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or byelaw.

(3.) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer or some

person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

Limit of sum recoverable as compensation.

3. The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury.

Limit of time for recovery of compensation.

4. An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks, and the action is commenced within six months from the occurrence of the accident causing the injury, or, in case of death, within twelve months from the time of death: Provided always, that in case of death the want of such notice shall be no bar to the maintenance of such action if the Judge shall be of opinion that there was reasonable excuse for such want of notice.

Money payable under penalty to be deducted from compensation under Act.

5. There shall be deducted from any compensation awarded to any workman, or representatives of a workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a penalty which may have been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action; and where an action has been brought under this Act by any workman, or the representatives of any workman, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action, such workman, representatives,

or person shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action.

Trial of actions.

6.—(1.) Every action for recovery of compensation under this Act shall be brought in a County Court, but may, upon the application of either plaintiff or defendant, be removed into a superior Court in like manner and upon the same conditions as an action commenced in a County Court may by law be removed.

(2.) Upon the trial of any such action in a County Court before the Judge without a jury one or more assessors may be appointed for the purpose of ascertaining the amount of compensation.

(3.) For the purpose of regulating the conditions and mode of appointment and remuneration of such assessors, and all matters of procedure relating to their duties, and also for the purpose of consolidating any actions under this Act in a County Court, and otherwise preventing multiplicity of such actions, rules and regulations may be made, varied, and repealed from time to time in the same manner as rules and regulations for regulating the practice and procedure in other actions in County Courts.

"County Court" shall, with respect to Scotland, mean the "Sheriff's Court," and shall, with respect to Ireland, mean the "Civil Bill Court."

In Scotland any action under this Act may be removed to the Court of Session at the instance of either party, in the manner provided by, and subject to the conditions prescribed by, section nine of the Sheriff Courts (Scotland) Act, 1877. 40 & 41 Vict. c. 50.

In Scotland the Sheriff may conjoin actions arising out of the same occurrence or cause of action, though at the instance of different parties and in respect of different injuries.

Mode of serving notice of injury.

7. Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the

date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business; and, if served by post, shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and, in proving the service of such notice, it shall be sufficient to prove that the notice was properly addressed and registered.

Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at or by sending it by post in a registered letter addressed to the office, or, if there be more than one office, any one of the offices of such body.

A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the Judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.

Definitions.

8. For the purposes of this Act, unless the context otherwise requires,—

The expression "person who has superintendence entrusted to him" means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour:

The expression "employer" includes a body of persons corporate or unincorporate:

The expression "workman" means a railway servant and any person to whom the Employers and Workmen Act, 1875, applies.

38 & 39 Vict. c. 90.

Commencement of Act.

9. This Act shall not come into operation until the first day of January one thousand eight hundred and eighty-one, which date is in this Act referred to as the commencement of this Act.

Short title.

10. This Act may be cited as the Employers' Liability Act, 1880, and shall continue in force till the thirty-first day of December one thousand eight hundred and eighty-seven, and to the end of the then next Session of Parliament, and no longer, unless Parliament shall otherwise determine, and all actions commenced under this Act before that period shall be continued as if the said Act had not expired.

INDEX.

"ABOUT,"
a dock, wharf, or quay, 91—94.
machinery or plant, 96, 97.
meaning of, 64—68.

ACCEPTANCE,
form of notice of, 240.
of sum in settlement a bar to proceedings, 28.
of weekly payment offered or sum paid into Court, 38, 190, 191.
of weekly payments by workman, effect of, 23, 28, 29, 42.

ACCIDENT,
almost entirely a question of fact, 10, 11.
arising from sudden emergency, 12, 15.
blood-poisoning caused by, 10.
includes injuries caused by negligence or misconduct, 24—27.
injury by, meaning of, 8—12.
injury caused by disease, 8.
aggravated by disease, 9, 10, 11.
involves something fortuitous and unexpected, 8, 9, 10.
must disable for two weeks, 20, 21.
notice of, must be given as soon as practicable, 44.
out of and in course of employment, 12—19: *see* EMPLOYMENT.
resulting from epileptic fit, 11, 12.
rupture through strain, 8, 9, 10.
shock to nervous system caused by, 11.
while going to or from work, 16—19.

ACTION,
against a stranger, whether a bar to compensation, 61, 62.
application for assessment of compensation, on dismissal of, 41, 42.
for damages against employer, when a bar to compensation, 22, 23, 42.
unsuccessful, deduction of costs of, 41, 42.

ADMISSION OF LIABILITY,
by employer, effect of, 49, 50.
by respondent, 37, 38, 189—192.
by third party, 58, 193, 194.
form of notice of, 237.

AFFIDAVIT,
of service of notice, &c., on respondents, form of, 186.
on application against insurers, form of, 252.

AGREEMENT,
application for order to record memorandum of, 149, 206.
form of notice of the application, 248.
effect of, as an estoppel from setting up time limit, 49, 50.
form of memorandum of, 245.
proceedings where genuineness of, disputed, 149, 150, 205.
recording of memorandum of, 28, 29, 148, 205.
settlement of compensation by, 28, 29.
verbal, recording of memorandum of, 149.
when recorded, is enforceable as a County Court judgment, 28, 148.

AGRICULTURE,
definition of, 159.
extension of Act of 1897 to workmen in, 158 *et seq.*
sub-contracts in, 158, 160, 161.

AMOUNT,
of compensation: *see* COMPENSATION.
of costs to be paid to solicitor or agent: *see* COSTS.

"ANCILLARY OR INCIDENTAL," meaning of, 55—57.

ANSWER,
by respondents, 36, 37, 188, 189.
effect of failing to file, 37, 50, 189.
form of, 235.
where employer is applicant, 189.

APPEAL,
from the Court of Appeal to the House of Lords, 144.
none from the Court of Session to the House of Lords, 157.
none to Court of Appeal from order on application against insurers, 61.

to Court of Appeal from County Court Judge, 142—144.
duty of County Court Judge to make a note for purpose of, 203, 259, 260.
duty of party appealing to supply copy of Judge's notes, 259, 260.
filing and enforcing judgment of Court of Appeal on, 143, 204.
only on a question of law, 143.
procedure on, 143, 203, 204, 259, 260.
security for costs of, when required, 144.
stay of execution pending, 144.

APPEARANCE,
default of, in arbitration, 156.
of parties in arbitrations by other persons, 145, 200, 201.

APPLICANT,
may be the employer, 34.
who is, 34.

APPLICATION,
against insurers, 59—61, 211—216: *see* INSURERS.
for appointment of new arbitrator, 147, 198, 259.
for **Arbitration**, who may make, 34.
as to amount payable for medical attendance and burial expenses, 122, 123, 180.
by employer, 183, 184.
by or on behalf of dependants, for settlement of amount of compensation, 122, 179.
where compensation ascertained, 134, 135, 180.
delivery of copies of, 35, 184.
forms of, 223—231.
how made, 34, 183.
particulars to be appended to, 34, 35, 183, 184.
for order to record memorandum, or for rectification of register, 149, 206.
form of notice of, 248.
proceedings on, 149, 206.
for review or redemption of weekly payment, 137—139.
form of, 233.
for transfer of proceedings, 218.
to determine amount of costs payable to solicitor or agent, 153, 207.
form of notice of, 249.
to stay proceedings for refusal to allow medical examination, 133, 211.
filing and service of notice of, 133, 211.
form of notice of, 252.
to suspend weekly payments, 137, 211.
form of notice of, 252.

APPOINTMENT,
of arbitrator, 31, 32, 141.
by County Court Judge, 39, 40, 141, 197.
of medical referees, 154.
of new arbitrator in case of death, inability, or refusal to act, 147, 197.

APPORTIONMENT,
of sum awarded for medical attendance and burial, 123, 181.
paid by insurers, 60, 214, 215.
paid into Court amongst dependants, 38, 191.

APPRENTICE,
is a workman, 107.
value of tuition cannot be considered in estimating earnings of, 124.

ARBITRATION,
acceptance of sum paid into Court, 38, 190, 191.
weekly payment offered, 37, 38, 190, 191.
form of notice of, 240.
agreement a bar to proceedings for, 28, 29.

answer by respondents, 36, 37, 188, 189.
effect of failure to file, 37, 189.
form of, 235.
where employer is applicant, 189.
appeal from: *see* APPEAL.
appearance of parties, 145, 200, 201.
applicant for, who may be, 34, 178.

application for,
as to medical and burial expenses, 122, 123, 180.
review or redemption of weekly payment, 137—139.
who are dependants, or amount payable to each, 122, 134, 135, 180.
by dependants for settlement of amount of compensation, 122, 179.
where amount of compensation ascertained, 134, 135, 180.
by employer, 183, 184.
by legal personal representative, 122, 134, 179, 180.
by parties under disability, 181, 182.
forms of, 223—231.
how made, 34, 183.
may be made by employer or workman, 34.
particulars to be appended to, 34, 35, 183.
application for stay of proceedings in, 36, 187, 188.
apportionment of sum paid into Court, 38, 123, 181, 191.
Arbitration Act, 1889, does not apply to, 32, 142.
assessment of compensation by, on dismissal of action, 41, 42.

award, 39, 196.
forms of, 241, 242.
how far binding on third party, 58, 62, 193, 194.
to be recorded in special register, 148, 204.
claim for indemnity against respondent in, 58, 59, 195.
third party, 57, 58, 192—194.
contractor may be joined as respondent in, 34, 178.

costs of, as between party and party, 145—147, 201—203.
party entitled to compensation and his solicitor, 152—154, 207, 208.
may be given against third party, 58, 193.
default of appearance in, 156.
enforcement of award, 39, 150, 151, 196, 209, 210.
estoppel of employer from setting up time limit in, 49, 50.
filing and service of documents and notices, 219.
fixing day and place for, 35, 40, 184, 185, 198.
joinder of applicants in, 34, 178, 179.
limit of time for proceedings for, 44, 48.
matters to be settled by, 27, 28, 30, 31.

ARBITRATION—*continued.*
medical referee may be referred to for report, 154, 155, 262, 263.
new trial cannot be granted, 40.
no Court fee payable prior to award, 33, 152.
notice of day, place, and hour for, 35, 185.
forms of, 234, 235.
in lieu of service in, 219, 220.
of application for stay of proceedings, form of, 252.
where employer is the applicant, 185.
particulars to be appended to request for, 34, 35, 183, 184.
forms of, 223—231.
parties to, 34, 178—183.
acting by solicitor, 219, 220.
having same interest, 181.
under disability, 181, 182.
payment into Court, 37, 38, 189—192.
place for, 35, 185.
procedure at hearing of, similar to that in County Court action, 39, 41, 195, 220.
procedure in, in County Court, 33—41.
regulated by Workmen's Compensation Rules, 33.
proceedings before arbitrator appointed by Judge, 39, 40, 197—199.
to be recorded in special register, 33.
questions to be settled by, 27, 28, 30, 31.
record of proceedings in, 33.
reference to medical referee for report in, 154, 155, 262, 263.
request for, 34, 183.
forms of, 223—231.
particulars to be appended to, 34, 35, 183, 184.
respondents in, 34.
review or redemption of weekly payment, 137—139.
service of documents and notices, 219.
special case, 142, 143.
special register of proceedings in, to be kept, 33.
stay of proceedings in, for refusal to submit to medical examination, 133, 211.
test case, 36, 187, 188.
submission of questions of law, 142, 143
to award, 37, 38, 189—192.
substituted service, 219, 220.
suspension of weekly payment, 137, 211.
third party procedure, 57, 58, 192—195.
how far bound by award, 58, 62, 194.
time limit for proceedings for, 44, 48.
transfer of proceedings, 33, 151, 218.
tribunals, 31, 32, 141.
unsuccessful action against employer, when a bar to, 22, 23, 41, 42.
stranger, 61, 62.
where held, 35, 185.

ARBITRATION ACT does not apply to arbitrations under the Act, 32.

ARBITRATOR: and *see* ARBITRATION.
appeal from: *see* APPEAL.
appointed by County Court Judge has all the powers of County Court Judge, 32, 141.
proceedings before, 39, 40.
appointment of, by County Court Judge, 39, 40, 141, 197—199.
by High Court, 147, 259.
award of, 39.
forms of, 241—243.
County Court Judge is, generally, 33.
death of, 147.
payment of, 32, 141, 142.
powers of, 32, 33, 142.
as to costs, 145, 146, 152—154, 201, 202: *see* COSTS.
investment of sums allotted to dependants, 135.
witnesses and production of documents, 33, 142.
no power to grant a new trial, 40, 142.
to refer to medical referee, for report, 154, 155.
to require attendance of medical referee, 155.
when respondent does not appear, 156.
proceedings on appointment of, by High Court, 147, 197, 198.
questions to be settled by, 27, 28, 30, 31.
submission of questions of law by, 142, 143.
who may be, 31, 32, 141.

ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT, 12—19: *see* EMPLOYMENT.

ASSESSMENT OF COMPENSATION: *see* COMPENSATION.

ASSIGNMENT, weekly payment is incapable of, 139.

"AVERAGE WEEKLY EARNINGS,"
how ascertained, 126—132.
in case of employment for less than two weeks, 129, 130.
where break in employment, 126, 127.

AWARD,
correction of clerical errors in, 39, 196.
committal for default in payment, 150.
enforceable as a judgment, 39, 148, 150, 151, 196.
execution on, 150, 209.
form of, 250.
form of judgment summons to enforce, 251.
execution on, 250.
memorandum of, 245.
of costs to be paid to solicitor or agent, 153.
proceedings on, 153, 154, 208, 209.
of indemnity against third person, 58, 59, 62, 194, 195.
recording memorandum of, 148, 150, 204—206.
for proceeding in another Court, 151, 217.
submission to, by respondents, 37, 38, 189.
forms of notice of, 237, 238.

BAKEHOUSE is a factory if mechanical power used, 80.

BANKRUPTCY of employer, applications against insurers in case of, 59—61, 211—216: and *see* INSURERS.

BARMAID at railway refreshment room, 68, 76.

"BEING CONSTRUCTED OR REPAIRED," meaning of, 70—74.

BLAST FURNACES are factories, 79.

BLEACHING AND DYEING WORKS,
are factories, 78.
definition of, 78.

BLOOD-POISONING, 10.

BOOKBINDING WORKS are factories, 80.

BOTTLE-WASHING WORKS,
are factories under Act of 1901 if mechanical power used, 77, 83.
under Acts of 1878—1891, 82, 83.

BUILDING,
alteration of, is construction or repair, 71, 72, 73.
"being constructed or repaired by means of scaffolding," 70—74.
"construction," meaning of, 71, 72.
construction of, when complete, 74.
height of, how ascertained, 68—70.
immaterial if mechanical power used, 68.
mainly a question of fact, 69.
where communication with adjoining building, 69, 70.
must exceed thirty feet high at time of accident, 68.
painting, 70, 73.
plastering, 71.
power machinery used for construction of, is a factory, 84—86, 96.
repair, meaning of, 70, 71, 73.
undertakers of, 101, 105—107.
when within the Act, 63, 68.

BURDEN OF PROOF,
as to prejudice of employer by want of due notice of accident, 47.
that injury arose out of and in course of employment, 19.
attributable to serious and wilful misconduct, 24, 27.
the same, whoever is the applicant for arbitration, 39, 196.

BURIAL EXPENSES,
arbitration as to sum payable, and apportionment of, 122, 123, 180, 181.
compensation in respect of, to whom paid, 133, 134.
who may apply for arbitration as to, 122, 123, 180.

CARPET-BEATING WORKS are factories under Act of 1901 if mechanical power used, 77, 81.

CARTRIDGE WORKS are factories, 79.

CASUAL WORKMAN,
how compensation assessed in case of, 128, 131.
in agriculture, 159.
is within the Act, 20, 108, 109.

CERTIFICATE,
of compensation, 41, 42.
enforceable as a County Court judgment, 43, 150, 209, 210.
execution on, 150, 151, 209, 210.
form of, 249.
form of judgment summons to enforce, 251.
recording of, 43, 150, 151, 209, 217.
of medical referee, conclusive as to workman's condition, 136, 137.
of Registrar of Friendly Societies as to scheme in substitution for Act, 50—52.
revocation of, 51, 52.

CHOICE OF REMEDIES,
where employer liable independently of Act, 22, 23, 41, 42.
stranger liable, 61, 62.

CLAIM FOR COMPENSATION,
estoppel of employer from setting up want of, 49, 50.
meaning of, 48.
time for making, 44.

CLAIM FOR INDEMNITY,
against another respondent, 58, 195.
form of notice of, 240.
notice of, must be given, 58, 59, 195.
third party procedure on, 57—59, 192—195.

COAL MINE: *see* MINE; PIT-BANKS.

COAL MINES REGULATION ACT, 1887, breach of special rules under, not necessarily serious and wilful misconduct, 24—27.

COMMITTAL,
for default in payment of compensation, 150, 151.
form of judgment summons, 251.

COMMITTEE,
as arbitrator, 31, 141.
no power to compel attendance of witnesses, 33, 142.
objection to, 31, 141.
submission of questions of law by, for decision of County Court Judge, 142, 143.

COMMON LAW, liability of employer at, preserved, 22, 23.

COMPANY,
appearance by, in arbitration, 145, 200, 201.
service of notice of accident on, 45.

COMPENSATION,
acceptance of, 23, 28, 29.

amount of, based on "average weekly earnings," 124—132.
in case of death, 111—122.
where wholly dependent, 118, 120.
partly dependent, 119, 120—122.
no dependants, 119.
in case of total or partial incapacity, 119, 123—125.
may be fixed by agreement or arbitration, 27—29.
apportionment of, 38, 123.
arbitration as to: *see* ARBITRATION.
assessment of, on dismissal of action, 41, 42.
casual workmen entitled to, 20.
certificate of, 41, 42.
form of, 249.
claim for, meaning of, 48, 49.
must be made within six months, 44.
contracting out of right to, how far permitted, 50—52.
deduction of costs from, 41, 42.
disallowed if injury due to serious and wilful misconduct, 24—27.
in case of bankruptcy or insolvency of employer, 59—61, 211—216.
injury must arise out of and in course of employment, 7, 12—19.
be caused by accident, 7—12.
disable for at least two weeks, 20, 21.
investment of, 135, 136.
liability of employer in agriculture to pay, 158—161.
of undertaker to pay, to workmen of contractor, 52—57.
to pay, how determined, 27, 28.
lien on, for costs, 152—154, 207, 208.
none for first two weeks, 119.
notice of accident must be given, 44—47.
offer of, to be taken into consideration on question of costs, 146, 202.
payment of, 152.
by Friendly Society, 52, 139, 140.
in case of death, 133, 134.
questions as to, how settled, 27, 28.
review or redemption of weekly payment, 137—139.
right to, how affected by action for or recovery of damages, 22, 23, 42, 61, 62.
scale of, 118 *et seq.*
scheme of, in substitution for Act, 50—52.
statutory penalties to be taken into consideration in assessing, 43, 44.
sub-contractor not liable to pay, 54.
suspension of right to, for refusing to submit to medical examination, 132, 133, 136, 137.
undertakers only are liable to pay, 7, 8, 53, 54.
where employed for less than two weeks, 129, 130.

"CONSTRUCTION,"
includes alterations, 71, 72.
partial construction, 72.
meaning of, 71—74, 100.

CONTRACTING OUT,
contracts existing at commencement of Act, 117.
how far permitted, 50—52.
in case of workmen employed by Crown, 116, 117.

CONTRACTOR,
for work in agriculture, 158, 160, 161.
independent, is not a workman, 108, 109.
liability of, to indemnify undertakers, 53—55.
liability of undertakers to workmen of, 52—57.
may be joined as respondent with undertakers, 34, 178.
not liable to pay compensation unless an undertaker, 53, 54, 105—107.
procedure on claim for indemnity against, 57, 58, 192—195.
when an undertaker, 105—107.

CONTRIBUTORY NEGLIGENCE, does not affect right to compensation, 15, 19.

COPPER MILLS are factories, 79.

CORPORATION,
appearance by, in arbitration, 145, 201.
service of notice of accident on, 45.

COSTS,
against third party, 58, 193, 194.
allowance of special items, 202.
application to determine amount of, how made, 153, 206, 207.
form of notice of, 249.
service of notice of, 153, 207.
arbitrator may allow fixed sum for, without taxation, 146.
as between party and party, 145—147.
entitled to compensation and his solicitor or agent, 152—154.
authority of solicitor to take out of Court sum paid in respect of, 147, 203.
awarded by agreed arbitrator, taxation of, 147, 203.
determination of value of subject-matter for purpose of, 146, 153, 202, 208.
entry in register of amount of, 147, 153, 203, 208.
execution against employer on award of, 154, 209.
expenses of medical examination may be allowed, 137, 155, 202.
in case of submission to award or payment into Court, 38, 191, 192.
liability of employer to pay, 154, 208.
lien for, 152—154, 207, 208.
of and incident to arbitration, 145, 201, 202.
of appeal, security for, when required, 144.
of special case, 143, 200.

COSTS—*continued.*
of application to record memorandum, or rectify register, 149, 206.
of unsuccessful action, deduction of, 41, 42.
offer of compensation to be taken into consideration on question of, 146, 202.
payment of, out of sum paid into Court, 154, 209.
proceedings on award of, 153, 154, 208, 209.
recording memorandum of, 147, 153, 203, 208.
scale of, 201, 202, 207, 208.
taxation of, 146, 147, 153, 203, 207, 208.
valuation of subject-matter for purpose of, 146, 153, 202, 208.

COUNTY COURT,
arbitration in: *see* ARBITRATION.
in Scotland means Sheriff Court, 155.
in what district proceedings to be taken, 148, 151.
no Court fee payable in, prior to award, 152.
recording of memorandum of award, agreement, or certificate in, 151, 204—206, 217.
proceedings in, to be recorded in special register, 33.
transfer of proceedings in, 151, 218.

COUNTY COURT JUDGE,
appeal from, 142—144: *see* APPEAL.
arbitrator appointed by, 32, 39, 40, 141, 197.
duty of, to take notes, 203, 259, 260.
duty of, under the Act, part of duties of County Court, 152.
generally arbitrator, 33, 141.
in Scotland, sheriff is substituted for, 140, 155.
may give leave for appearance of parties by other persons, 145, 200, 201.
no power to grant new trial, 40, 142.
power of, to transfer proceedings, 33, 151.
to appoint an arbitrator, 39.
to rectify register, 148.
procedure in arbitration before: *see* ARBITRATION.
submission of questions of law for decision of, 142, 143.

COURSE OF EMPLOYMENT: *see* EMPLOYMENT.

COURT OF APPEAL,
appeal from, to House of Lords, 144.
appeal to, from County Court Judge, 142—144.
only on a question of law, 143.
procedure on, 143, 203, 204, 259, 260.
security for costs, when required, 144.
filing and enforcing judgment of, 143, 204.
no appeal to, from order on application against insurers, 61.

COURT OF SESSION,
appeal to, from sheriff by stated case, 156, 157.
no appeal from, to House of Lords, 156, 157.

CROWN,
contracting out in case of workmen employed by, 116, 117.
factories belonging to or in occupation of, 83.
workmen employed by, 116, 117.

DAILY WORKMAN,
how compensation assessed in case of, 128—131.
is within the scope of the Acts, 20, 108, 109.

DAMAGES,
action for, when a bar to compensation, 22, 23, 42.
application for compensation on dismissal of action for, 32, 41, 42.
recovery of, from stranger, 61, 62.
right of action for, preserved, 22, 23.

DEATH,
of arbitrator, 147, 259.
of dependant, 114.
of employer, 107.
of workman, who entitled to compensation in case of, 110—114.
amount of compensation in case of, 118—122.
where wholly dependent, 118, 120.
partly dependent, 119, 120—122.
no dependants, 119.
payment of compensation in case of, 133, 134.

DEBTORS ACT, 1869, proceedings under, 210.

DECLARATION OF LIABILITY where full wages paid, 21, 124.

DEFAULT OF APPEARANCE in arbitration, 156.

DEFECT in notice of accident, effect of, 44, 47.

DEFINITIONS, 74 *et seq.*

DEPENDANTS,
acceptance by, of sum paid into Court, 38, 190—192.
amount of compensation where wholly dependent, 118, 120.
partly dependent, 119, 120—122.
application by, for arbitration as to amount of compensation, 122, 179.
where amount of compensation ascertained, 134, 135, 180.
definition of, 110, 111.
in Scotland, 110, 111.
illegitimate child, 111.
parent of illegitimate child, 111.
"in part dependent," 112—114.
investment of compensation allotted to, 134—136, 216, 217.
legal personal representative may apply for arbitration on behalf of, 122, 134, 179, 180.

DEPENDANTS—*continued.*
legal personal representative of, no right to compensation, 114, 122.
must be dependent at time of death, 110, 118, 119, 121.
meaning of dependency, 111—114.
no claim for partial dependency if there are dependants wholly dependent, 112, 120.
payment of compensation in case of, 133, 134.
questions as to who are, and amount payable to each, how settled, 134.
who are, 110—114.

DEPENDENCY,
must be at time of death, 110, 118, 119, 121.
partial, 112—114.
test of, 114.
total, what is, 114.
what is, 111—114.
mainly a question of fact, 112, 113.

DISABILITY,
from earning full wages, what is, 20, 21, 124.
must be for two weeks, 20, 21.
parties under, 34, 181, 182.

DISCOVERY in aid of application against insurers, 60, 215, 216.

DISEASE, injury caused or aggravated by, 8, 9, 10, 11.

DISMISSAL OF ACTION,
application for compensation on, 32, 41, 42.

DISOBEDIENCE,
to orders or statutory rules not necessarily serious and wilful misconduct, 13—15, 19, 24—27.

DISTRICT in which proceedings to be taken, 32, 33, 148, 151, 218.

DOCK,
employment on ship in a, 91—94.
is a factory within Workmen's Compensation Act, 76, 84—89.
loading or unloading or coaling ship in a, 84, 85, 94—96.
occupier of, 102—104.
"on, in, or about" a, 91—94.
repairing ship in, 115, 116.
undertakers in case of a, 84, 85, 102—104.

DOCUMENTS, power of arbitrator to require production of, 33, 142.

DRY CLEANING WORKS are factories if mechanical power used, 77, 81.

DRY DOCK, repairing ship in a, 92, 93.

DUTY,
injury caused while acting outside scope of, 12—15.
in cases of emergency, 12, 15.
of County Court Judge and arbitrator appointed by him part of duties of County Court, 152.
of County Court Judge to take notes, 203, 259, 260.

EARNINGS,
"average weekly," how estimated, 126—131.
deductions from wages, 131.
meaning of, 124, 131, 132.
value of tuition, 124.

EARTHENWARE WORKS are factories, 78.

ELECTION,
of remedies where employer liable independently of Act, 22, 23, 41, 42.
stranger liable, 61, 62.

ELECTRICAL STATIONS,
are factories within the Act of 1901...77, 80.
definition of, 80.

EMERGENCY, exceeding scope of duties in case of, 12, 15.

EMPLOYER,
application for arbitration by, 183, 184.
bankruptcy of, 59—61, 211—216.
definition of, 107.
legal personal representative liable in case of death of, 107.
liability of, independently of Act, preserved, 21, 22.
may apply for arbitration, 34, 35.
may be made respondent to arbitration between dependants, 180.
may require workman to submit to medical examination, 132, 133, 136, 137.
not liable to pay compensation unless an undertaker, 7, 8, 53, 54, 105—107.
of workmen in agriculture, 158—161.
right of, to indemnity against stranger, 61, 62.

EMPLOYERS' LIABILITY ACT, 1880, 272—277.
acceptance of compensation is a bar to an action under, 42.
application for compensation on dismissal of action under, 32, 41, 42.
liability under, preserved, 22, 23.
proceedings for compensation are a bar to an action under, 22, 23, 42.

EMPLOYMENT,
casual, within scope of Act, 20, 159.
how compensation assessed in case of, 128—130.
commencement of, distinguished from commencement of work, 16—19.
continuous, meaning of, 126—128.

EMPLOYMENT—*continued.*
for two weeks not necessary, 20, 129, 130.
in agriculture, 158—161.
in service of Crown, 116, 117.
in Schedule I. (1) means continuous employment, 126, 127.
injury must arise "out of and in course of," 7, 12—19.
must be by "undertakers," 7, 8, 53, 54, 63: *see* UNDERTAKERS.
nature of, immaterial if employed on, in, or about the works, 64, 67, 74, 107.

"on, in, or about," a building, 63, 68—74.
a dock, wharf, or quay, 91—94, 102—104.
an engineering work, 63, 65, 99, 100.
a factory, 63—67.
a mine, 63, 66, 67, 98.
a quarry, 63, 99.
a railway, 63, 66, 68.
a ship in dock, 91—94, 102—104, 115, 116.
machinery, 65, 66, 96, 97.
meaning of, 64—68.

"out of and in course of," what is an injury arising, 12—19.
not when doing something for own pleasure or purposes, 12, 13.
acting outside scope of duties, 12—15.
unless in an emergency, 12, 15.
when accident due to misconduct or negligence, 15, 16, 19.
wrongful interference with machinery, 14, 15, 26.
disobedience to orders, 13—15, 19, 26.
breach of statutory rules, 15, 24—27.
when caused by fellow-workmen, 16.
going to and returning from work, 16—19.
when employment commences and ends, 16—19.
burden of proof that injury arose, on workman, 19.
period of, for purpose of assessing compensation, 126—129.

EMPLOYMENTS to which the Acts apply, 63, 158—161.

ENFORCEMENT of award, memorandum, or certificate, 39, 40, 43, 148, 150, 151, 196, 199, 209, 210.

ENGINEERING WORK,
confined to works of construction, alteration, or repair, 100.
definition of, 99, 100.
employment on, in, or about, 63, 65, 99, 100.
undertakers of, 101.

EPILEPTIC FIT, injury in consequence of, 11, 12.

ESTOPPEL from setting up time limit, 49, 50.

EXAMINATION: *see* MEDICAL EXAMINATION.

EXECUTION,
against insurers, form of, 256.
on award, memorandum, or certificate, 150, 209, 210.
form of, 250.
to enforce an award of costs, 154, 209.

FACTORY,
"about" a, premises occupied with, 67.
belonging to or in occupation of the Crown, 83.
definition of, for purposes of Workmen's Compensation Act, 76.
docks, &c., under Factory and Workshop Act, 1895, 84—91.
effect on, of Factory and Workshop Act, 1901...77, 80, 83, 85, 89, 95.
in Factory and Workshop Acts, 1878—1891... 77—83.
dock is a, 84—89.
employment on, in, or about a, 63.
must be on, in, or about own factory, 63, 64, 101.
outside a, 63, 64, 101.
machinery or plant may be a, 84—86, 94—96.
on board ship may be a, 95.
used in process of loading or unloading ship, 85, 104.
may be in open air, 83.
occupier of, 101, 102.
"on, in, or about" a, meaning of, 64—68.
a dock, wharf, or quay, 91—94.
machinery or plant, 96, 97.
place not used for manufacturing purpose, 83.
used solely for sleeping, 83.
quay is a, 84—89.
ship in dock is not a, 91—94.
undertakers of, 101—104.
of dock, wharf, quay, or warehouse, 84, 85, 102—104.
of machinery or plant, 84—86, 104.
warehouse is a, 84—91.
wharf is a, 84—90.
what is a, for purposes of Workmen's Compensation Act, 76—96.

FACTORY AND WORKSHOP ACTS: *see* FACTORY.
penal compensation under, 43, 44.

FARM, use of steam-engine on, 82, 158, 160.

FATAL ACCIDENTS ACT, 1846,
for whose benefit action may be brought under, 110, 111.
right of action under, preserved, 22, 23.

FEES,
none payable in County Court prior to award, 152.
no person other than solicitor or counsel entitled to any, for appearing in arbitration, 145.
of medical referee, 266.
form of statement of, 270.
how paid, 137, 154, 266.
may be allowed as costs, 137, 202, 203.

FILING of documents and notices in arbitration in County Court, 219.

FINES under Acts relating to factories and mines, 43, 44.

FIT, injury in consequence of, may be an injury by accident, 11, 12.

FLAX SCUTCH MILLS are factories, 80.

FORMS, 223 *et seq.*, 267 *et seq.*
affidavit of service, 186, 187.
on summons against insurers, 252.
answer by respondents, 235.
application for arbitration,
by workman, 223.
by or on behalf of dependants, 225.
when amount of compensation ascertained, 228.
as to compensation for medical and burial expenses, 231.
as to review or redemption of weekly payment, 233.
award, in case of application by workman, 241.
dependants, 242.
in respect of burial and medical expenses, 243.
certificate of compensation, 249.
execution against insurers, 256.
on award, memorandum, or certificate, 250.
inquiry as to genuineness of memorandum, 247.
judgment summons, 251.
memorandum of agreement or award, 245.
notice of acceptance of weekly payment or sum offered, 240.
sum paid into Court, 240.
accident, 271.
admission of liability by respondent, 237.
application for registration of memorandum, 248.
rectification of register, 248.
to stay proceedings, 252.
suspend weekly payments, 252.
determine amount of costs, 249.
issue of summons to insurers, 254.
to applicant of day for proceeding with arbitration, 234.
to respondent of day for proceeding with arbitration, 235.
day for hearing special case, 244.
claim for indemnity, 240.
submission to award, 237.
filing submission to award, 238.
payment into Court, 237, 238.
disputing memorandum, 247.
that genuineness of memorandum disputed, 248.
by medical referee to injured workmen, 269.
order against insurers, 255.
to submit to medical examination, 269.
record of references to medical referees, 270.

FORMS—*continued.*
reference to medical referee, 267.
register, 256.
statement of fees by medical referee, 270.
summons to insurers, 253.

FOUNDRIES are factories, 79.

FRIENDLY SOCIETY, payment of compensation by, 52, 139, 140.

FUNERAL EXPENSES : *see* BURIAL EXPENSES.

FUSTIAN CUTTING WORKS are factories, 79.

GANGWAY used by persons loading or unloading ship, 86, 95.

GLASS WORKS are factories, 80.

HARBOUR, definition of, 86.

HAT WORKS are factories if mechanical power used, 80.

HEIGHT OF BUILDING,
how ascertained, 68—70.
immaterial, if power machinery used, 68.
mainly a question of fact, 69.
must be ascertained at time of accident, 68.

HOUSE OF LORDS,
appeal to, from Court of Appeal, 144.
no appeal to, from Court of Session, 157.

ILLEGITIMATE CHILD,
mother of, no right to compensation, 111.
no right to compensation, 111.

"IN THE COURSE OF THE EMPLOYMENT :" *see* EMPLOYMENT.

INCAPACITY,
compensation in case of, 119, 123—125.
from earning full wages, meaning of, 20, 21, 123, 125.
review or redemption of weekly payment in case of, 137—139.

INDEMNITY,
award of, 58, 59, 62, 194, 195.
claim of, against another respondent, 58, 195.
costs may be given against third party on claim for, 58, 193, 194.
form of notice of claim for, 240.
notice of claim for, must be given, 58, 59, 195.
procedure on claim for, 57—59, 192—195.
right of undertakers to, against contractor, 53—55.
stranger, 61, 62.
third party procedure on claim for, 57, 58, 193, 194.
making weekly payment, may require submission to medical examination, 136, 137.

INDEPENDENT CONTRACTOR,
is not entitled to compensation, 108, 109.
what is an, 108, 109.

INDIA-RUBBER WORKS are factories, 79.

INFANT, when party to arbitration an, 181.

INJURY,
arising out of and in course of employment, 12—19: *see* EMPLOYMENT.
attributable to serious and wilful misconduct, 24—27.
by accident, meaning of, 8—12: *see* ACCIDENT.
must disable for two weeks, 20, 21.
resulting in death, amount of compensation, 118—122.
incapacity, amount of compensation, 119, 123—129.
while on way to or from work, 16—19.

INJURY BY ACCIDENT, 8—12: *see* ACCIDENT.

INQUIRY as to genuineness of memorandum, 149, 205.
form of, 247.

INSOLVENCY of employer, applications against insurers, 59—61, 211—216.

INSURERS,
application against, on insolvency of employer, 59—61, 211.
form of affidavit on, 252.
form of summons on, 253.
how made, 59, 60, 211.
notice of, to employer may be ordered, 60, 214.
form of such notice, 254.
application against two or more sets of, 60, 214.
apportionment of sum paid by, 60, 214, 215.
discovery in aid of application against, 60, 215.
form of order against, 255.
execution against, 256.
investment and application of sums paid by, 59.
may be ordered to pay insurance monies into Post Office Savings Bank, 59.
make weekly payment direct to workman, 60, 214.
no appeal to Court of Appeal against order on application against, 61.
procedure on application against, 59, 60, 211—216.
right of, to review or redemption of weekly payments, 60, 138, 139, 214.

INTERPRETATION ACT, 1899, applies to Workmen's Compensation Rules, 33.

INVESTMENT of compensation allotted to dependants, 134—136, 216, 217.

IRELAND, application of Act to, 140, 157.

IRON MILLS are factories, 79.

JOINDER,
of applicants, 178, 179.
of contractor and undertakers as respondents, 34, 178.
of parties in application for arbitration, 34, 178, 179.
of two or more sets of insurers, 60, 214.

JUDGE'S NOTES, on appeal to Court of Appeal, 35, 259, 260.

JUDGMENT SUMMONS to enforce award, memorandum, or certificate, form of, 251.

LACE WAREHOUSES are factories if mechanical power used, 80, 81.

LADDER is not *per se* a scaffolding, 70.

LAUNDRY,
undertakers of, 101.
worked by mechanical power is a factory, 76.

LEGAL PERSONAL REPRESENTATIVE,
application for arbitration by, on behalf of dependants, 122, 134, 179, 180.
as to sum payable for medical and burial expenses, 122, 123, 180.
of dependant no right to compensation, 114.
of employer liable to pay compensation, 107.
particulars to be filed by, 122, 134, 135, 179, 180.
payment of compensation to, for benefit of dependants, 133, 134.

LETTER-PRESS PRINTING WORKS are factories, 80.

LIABILITY,
admission of, by respondents, 37, 38, 189.
to indemnify undertakers, 58, 194.
declaration of, where full wages paid, 21, 124.
effect of acknowledgment of, by employer, 49, 50.
of contractor to indemnify undertakers, 53—55.
of employer in agriculture, 158—161.
of employer independently of Act, preserved, 22, 23, 42.
of stranger to workman, 61, 62.
to indemnify undertakers, 61, 62.
questions as to, how determined, 27, 28.
to pay compensation confined to undertakers, 7, 8, 53, 54.

LIEN FOR COSTS, solicitor may be declared entitled to, 152—154, 207.

LIGHT RAILWAY, employment on or about, 75.

LIGHT RAILWAY COMPANY, definition of, 75.

LIMIT OF TIME,
application to register memorandum of agreement, 29, 149.
estoppel of employer from setting up, 49, 50.
for claim for compensation, 44.
for proceedings, 44.
meaning of claim for compensation, 48.
objection that out of time must be taken in answer, 50.

LOADING,
ship, 84, 85, 94—96, 103, 104.
when process of, complete, 95.

LUCIFER MATCH WORKS are factories, 80.

MACHINERY,
accident through interfering with, 14, 15, 26.
adjacent to a mine, 98.
includes any driving strap or band, 77, 78.
may be a factory, 76, 77, 84—86, 94—96.
moved by mechanical power, meaning of, 83, 100.
on board ship may be a factory, 95.
"on, in, or about," meaning of, 65, 66, 96, 97.
undertakers in case of, 84—86, 104.
use of, by contractor for agricultural work, 158, 160, 161.
used for construction of building, 68, 84—86, 96.
loading, unloading, or coaling ship, 84, 85, 94—96.

MEASUREMENT OF BUILDING, 68—70.

"MECHANICAL POWER," meaning of, 83, 100.

MEDICAL ATTENDANCE,
arbitration as to sum payable for, 122, 123, 180.
who may apply for, 122, 123, 180.
apportionment of sum paid in respect of, 123, 181.
payment of compensation in respect of, 133, 134.

MEDICAL EXAMINATION,
application to stay proceedings for refusal or obstruction of, 133, 211.
form of notice, 252.
must be made on notice in writing, 133, 211.
arbitrator no power to impose terms as a condition of submission to, 132, 133.
by medical referee: *see* MEDICAL REFEREE.
fee for, and travelling expenses, may be allowed as costs, 137.
injured workman must submit to, 132, 133.
stranger making weekly payment may require submission to, 136, 137.
suspension of weekly payment for refusing, 137.
application for, 137, 211.
form of notice of, 252.

MEDICAL EXAMINATION—*continued.*
workman dissatisfied with result of, may refer to medical referee, 136, 137.
in such case certificate of medical referee conclusive, 136, 137.
workman in receipt of weekly payments must submit to, 136, 137.

MEDICAL REFEREE,
appointment of, 154.
arbitrator may refer to, for report, 154, 155, 196.
certificate of, on voluntary submission to examination by, conclusive, 136, 137.
copy of report of, to be recorded in special register, 148, 204.
expenses of examination by, may be allowed as costs, 137, 155, 202.
form of reference to, 267.
notice by, to injured workman, 269.
order to submit to examination by, 269.
record of references to, 270.
statement of fees of, 270.
how paid, 137, 154, 266.
may be required to attend arbitration, 265, 266.
record of references to, to be kept, 264, 265.
regulations as to, 155, 261—270.
report of, 265.
may be remitted for further report, 265.
scale of fees of, 266.
selection of, 263, 264.
workman may be ordered to submit himself for examination by, 155, 196, 263.
voluntarily submit himself for examination by, 136, 137.

MEMORANDUM,
application for order to record, 149, 205, 206.
costs of, 149, 206.
form of notice of, 248.
proceedings on, 149, 206.
application for special warrant to register, in Scotland, 149, 150.
authentication of, 148, 205.
execution on, 150, 209, 210.
form of, 250.
form of, 245.
form of notice disputing genuineness of, 247.
that genuineness disputed, 248.
form of judgment summons for enforcing, 251.
inquiry as to genuineness of, 149, 205.
form of, 247.
of agreement or award, record of, 28, 148, 204—206.
when recorded, enforceable as a County Court judgment, 28, 148, 150, 210.
of award of costs may be recorded, 147, 153, 203, 208.
of verbal agreement may be recorded, 149.
proceedings on, in another Court, 151, 217.
record of, in Scotland, 156.

METAL WORKS are factories, 79.

METALLIFEROUS MINE: *see* MINE; PIT BANKS.

MINE,
definitions of, 97, 98.
employment "on, in, or about" a, 63—68.
meaning of "about" a, 66, 67.
includes sidings and tramways belonging to, 98.
owner of, 105.
pit banks of metalliferous, may be a factory, 81, 98.
coal, are not a factory, 81, 98.
railways and sidings connected with, 66, 67.
undertakers of, 101, 105.

MINING REGULATION ACTS,
breach of special rules under, not necessarily serious misconduct, 24—27.
penal compensation under, 43, 44.

MISCONDUCT does not affect right to compensation unless serious and wilful, 15, 16, 19: *see* SERIOUS AND WILFUL MISCONDUCT.

MISTAKE, agreement for compensation made under, 28.

"NEAR THE YARD," meaning of, 116.

NEGLIGENCE,
of employer, right of action for, preserved, 22, 23.
of workman does not affect right to compensation, 15, 19.

NERVOUS SHOCK caused by accident, 11.

NEW ARBITRATOR, appointment of, on death, &c., of arbitrator, 147, 259.

NEW TRIAL, County Court Judge no jurisdiction to grant, 40, 142.

NOTICE OF ACCIDENT,
copy of, must be appended to request for arbitration, 35, 183.
effect of want of, defect, or inaccuracy in, 44, 47.
forms of, 271.
giving of, does not preclude workman from suing stranger, 62.
must be given as soon as practicable, 44.
before voluntarily leaving employment, 44.
meaning of "as soon as practicable," 46, 47.
must be in writing, 45.
need not be given by workman himself, 46.
requisites of, 44—46.
service of, 44, 45.
workman who has given, must submit to medical examination, 132.

NOTICES, forms of: *see* FORMS.

OCCASIONAL EMPLOYMENT, assessment of compensation in case of, 128—131.

OCCUPIER,
of dock, wharf, or quay, 102—104.
of factory, quarry, or laundry, 101.
of machinery or plant, 104.

OFFER OF COMPENSATION may affect question of costs, 146, 202.

"ON, IN, OR ABOUT,"
a dock, wharf, or quay, 91—94.
machinery or plant, 96, 97.
meaning of, 64—68.

ONUS OF PROOF: *see* BURDEN OF PROOF.

OPTION,
to sue independently of Act or claim compensation, 22, 23, 42.
stranger for damages or claim compensation, 61, 62.

ORDER AGAINST INSURERS, form of, 255.

"OTHER MECHANICAL POWER," meaning of, 83, 100.

OUT OF AND IN COURSE OF EMPLOYMENT: *see* EMPLOYMENT.

OWNER,
of building, when an undertaker, 105, 106.
of mine, meaning of, 105.

PAINTING, whether construction or repair, 70, 73.

PAPER MILLS are factories, 80.

PAPER-STAINING WORKS are factories, 79.

PARTICULARS,
in answer by respondents, 86, 87.
form of, 235.
in case of application on behalf of dependants, 122, 179.
by employer, 184.
to be appended to request for arbitration, 34, 35, 183, 184.
forms of, 223—231.

PARTIES TO ARBITRATIONS, 34, 178—183.
acting by solicitors, 41, 145, 200, 219, 220.
appearance of, by other persons, 145, 200, 201.

PARTIES TO ARBITRATIONS—*continued.*
dependants, 179, 180.
having same interest, 34, 181.
in respect of medical and burial expenses, 180.
joinder of, 34, 178, 179.
partners, 34, 182, 183.
under disability, 34, 181, 182.

PARTNERS as parties to arbitrations, 182, 183.

PAYMENT: *see* WEEKLY PAYMENT.
of arbitrator, 32, 141, 142.
of compensation in case of death, 133, 134.
of costs awarded to solicitor or agent, 154, 208, 209.
of medical referee, 137, 154, 266.
of sum awarded as compensation, 152.
out of Court of money directed to be invested, 217.

PAYMENT INTO COURT,
acceptance of, 38, 190, 191.
form of notice of, 240.
by respondents, 37, 38, 189, 190.
costs in case of, 38, 192.
forms of notice of, 237, 238.
of money directed to be invested, 216.
of sum due to dependants, 135, 180.

PENALTIES under Acts relating to factories and mines, 43, 44.

PERCUSSION CAP WORKS are factories, 78.

PIECE WORKERS,
are within scope of Act, 108, 109.
how compensation assessed in case of, 128—131.

PIT BANKS,
of coal mines are not factories, 81, 98.
of metalliferous mines are factories if mechanical power used, 81, 98.

PLANT,
may be a factory, 76, 77, 84, 85, 94—96.
meaning of, 86, 95, 96.
"on or about," 96, 97.
undertakers of, 84—86, 104.
used in process of loading or unloading or coaling ship, 84, 85, 94—96.

POST OFFICE SAVINGS BANK,
investment in, of sums allotted to dependants, 135, 216, 217.
limits of deposits in, not to apply to, 135.
restrictions as to opening two accounts in, not to apply, 136.
payment into, by insurers, 59.
payment out of sums invested in, 135, 217.

POWERS OF ARBITRATOR, 32, 33, 142.

PRINT WORKS,
are factories, 78.
definition of, 78.

PRIVATE RAILWAY,
connected with mine or factory, 66, 67.
not within scope of Act, 75, 76.

PROCEDURE,
on appeal to Court of Appeal: *see* APPEAL.
on arbitration in the County Court, 33—41: *see* ARBITRATION.
application for suspension of weekly payment, 137, 211.
applications against insurers, 59, 60; *see* INSURERS.
claim for indemnity, 57—59, 62, 192—195.
submission of questions of law for decision of County Court Judge, 143, 199, 200.
third party, 57—59, 62, 192—194.

PROCEEDINGS,
against employer for damages, when a bar to compensation, 22, 23, 41, 42.
for compensation, when a bar to action for damages, 22, 23, 42.
against stranger, 61, 62.
as to subject-matter of award or memorandum recorded in another Court, 151, 217.
in arbitrations, 33—41: *see* ARBITRATION.
in County Court, no Court fee prior to award, 152.
in what district to be taken, 32, 33, 148, 151.
not maintainable, unless notice of accident given, 44—47.
on applications against insurers, 59, 60, 211—216.
an award of costs, 153, 154, 208, 209.
application to determine amount of costs, 153, 207.
to record memorandum, 149, 206.
to rectify register, 149, 206.
claim for indemnity, 57, 58, 62, 192—195.
stay of, for purpose of test case, 36, 187, 188.
form of notice of application for, 252.
for refusal to submit to medical examination, 132, 133, 211.
time limit for, 44.
estoppel of employer from setting up, 49, 50.
objection that out of time must be taken in answer, 50.
to be recorded in special register, 33, 221—223.
transfer of, 151, 218.

"PROCESS" in Factory Acts includes the use of locomotive, 78.

PRODUCTION OF DOCUMENTS, powers of arbitrator as to, 33, 142.

PROOF: *see* BURDEN OF PROOF.
of service of notice of accident, 45.

QUARRY,
definition of, 81, 98, 99.
employment "on, in or about" a, 63.
is a factory if mechanical power used, 81.
undertakers of, 101, 102.

QUAY,
is a factory, 76, 77, 84—89.
occupier of, 102—104.
"on, in or about" a, 91—94.
undertakers of, 102—104.

RAILROAD, meaning of, 100.

RAILWAY,
definition of, 75, 76.
dock or wharf belonging to, 75.
employment "on, in, or about" a, 63.
in course of construction, 75.
must be used for public traffic, 75.
private, 66, 67, 75, 76.
sidings, 66, 75.
station, when part of, 75, 76.
undertakers of, 75, 101.

RAILWAY COMPANY, definition of, 75.

RECORD
of award, certificate, or memorandum, 28, 29, 148, 149, 151, 204—206.
application for order for, 149, 206.
form of notice of, 248.
proceedings on, 149, 206.
more than six months after accident, 149.
of memorandum of verbal agreement, 149.
as to allowance of costs, 147, 153, 203, 208.
of award or agreement in Scotland, 149, 150, 156.
of proceedings in County Court, 221—223.
of references to medical referee, 155, 264, 265.
form of, 270.

RECTIFICATION OF REGISTER, 148.
application for, 149, 206.
form of notice of, 248.
service of notice of, 149, 206.
proceedings on, 149, 206.

REDEMPTION,
of weekly payment, 138, 139.
form of application for, 233.
right of insurers to, 60, 139, 214.
sum paid for, not capable of assignment, 139.
sum to be paid for, how settled, 139.

REFERENCE
to medical referee, 154, 155, 261—264.
duties of registrar as to, 264, 265.
form of, 267.
regulations as to, 261 *et seq.*

REFRESHMENT-ROOM at railway-station not part of railway, 68, 76.

REGISTER: *see* SPECIAL REGISTER.

REGISTRAR OF FRIENDLY SOCIETIES,
annual report of, to include proceedings under the Act, 51, 52.
revocation of certificate by, 51.
scheme in substitution for Act must be certified by, 50—52, 116.

REGISTRATION: *see* RECORD.

REGULATIONS as to medical referees, 261—270.

REMEDIES,
election of, against employer, 22, 23, 41, 42.
when stranger liable, 61, 62.

REPAIR
of building: painting and whitewashing, 70, 73.
road by means of steam-rolling, 99.
ship in dock, 102, 103, 115, 116.

REPORT
by medical referee, regulations as to, 265.
copy of, to be recorded with memorandum of award, 148, 204.
power of arbitrator to refer to medical referee for, 154, 155.

REQUEST FOR ARBITRATION,
as to medical and burial expenses, 122, 123, 180.
as to review or redemption of weekly payment, 137—139.
by or on behalf of dependants, 122, 134, 135, 179, 180.
forms of, 223—230.
how made, 34, 183, 184.
may be made by either party, 34, 183, 184.
need not be made within 6 months if claim for compensation made, 48.
particulars to be appended to, 34, 35, 183, 184.

RES JUDICATA, 22, 23, 42.

RESPONDENTS,
admission of liability and payment into Court by, 37, 38, 189, 190.
answer by, 36, 37, 188.
effect of failure to file, 37, 189.
form of, 235.
claim of indemnity by, 57—59, 62.
default of appearance by, 156.
joinder of, 34.
service on, 186.

REVIEW OF WEEKLY PAYMENT,
application for, to be made before original arbitrator, 138.
at request of either party, 21, 137, 138.
form of application for, 233.
not unless some change in circumstances, 138.
right of insurers to, 60, 138, 214.

ROOF must be included in measurement of building, 69.

ROPE WORKS are factories if mechanical power used, 80.

RULES: *see* WORKMEN'S COMPENSATION RULES.

RULES OF SUPREME COURT as to appeals, 259.

RUPTURE caused by strain, 8, 9, 10.

SAVINGS BANK : *see* POST OFFICE SAVINGS BANK.

SCAFFOLDING,
being constructed by means of, until removed, 74.
though scaffolding not in use at the time, 74.
ladder *per se* is not a, 70.
may be external or internal, 71, 72.
mixed question of law and fact, 72.
what is a, 70—74.

SCALE
of compensation, 118 *et seq.*
of costs: *see* COSTS.

SCHEME,
may be substituted for warrant under Superannuation Act, 116, 117.
must be certified by Registrar of Friendly Societies, 50—52.
revocation of certificate as to, 51, 52.
substitution of, for benefits of Act, 50—52.

SCOTLAND,
application of Act to, 140, 155—157.
no appeal from Court of Session, 157.

SEAMAN, whether within scope of Act, 93, 109, 110.

SECURITY FOR COSTS of appeal, when required, 144.

SERIOUS AND WILFUL MISCONDUCT,
breach of statutory rules not necessarily, 24—27.
disobedience to orders is not necessarily, 26.
if injury attributable to, compensation disallowed, 24.
meaning of, 19, 24—27.
onus of proving, on employer, 24, 27.
what is, generally a question of fact, 25—27.

SERVICE,
of notice of accident, 44, 45.
of notice of application to determine amount of costs, 153, 207.
to record memorandum, 149, 206.
to rectify register, 149, 206.
of notices and documents in arbitrations, 219.

SERVICE—*continued.*
on employer of notice of application against insurers, 214.
on respondents of copies of request for arbitration, &c., 36, 186.
form of affidavit of, 186, 187.
notice in lieu of, 41, 220.
substituted, 41, 220.
where parties act by solicitors, 41, 219, 220.

SET-OFF not allowed against weekly payment or redemption money, 139.

SETTLEMENT BY AGREEMENT, 28, 29 : *see* AGREEMENT.

SHERIFF,
in Scotland, substituted for County Court Judge, 140, 155.
special warrant of, to register memorandum of agreement, 149, 150.
statement of case by, for opinion of Court of Session, 156, 157.

SHERIFF COURT in Scotland substituted for County Court, 155.

SHIP,
definition of, 86.
employment on or about a, 91—94, 109, 110.
in dock, repair of, 102, 103, 115, 116.
machinery on board may be a factory, 95.
or plant used for loading or unloading, 84—86, 94—96.

SHIPBUILDING YARD,
definition of, 81.
is a factory if mechanical power used, 81.
meaning of "near the yard," 116.
what is a, 115, 116.

SHIPOWNERS, liability of, when loading or unloading, 103, 104.

SIDING,
used in connection with mines or factories, 66, 67, 97, 98.
when part of railway, 75.

SOLICITOR,
authority of, to take out sum paid into Court, 147, 154, 203, 209.
change of, 220.
determination of amount of costs to be paid to, 152—154, 207.
lien of, for costs, 153, 207.
may appear at arbitration, 145, 200.
rules as to parties acting by, 41, 219, 220.

SPECIAL CASE,
appeal from decision on, 142—144.
for decision of Court of Session, 156.

SPECIAL CASE—*continued.*
form of notice of day for hearing, 244.
no appeal from decision of Court of Session on, 157.
procedure on statement of, 143, 199, 200.
statement of, by arbitrator, 143, 199, 200.

SPECIAL REGISTER,
entry in, of costs allowed on taxation, 147, 153, 203, 208.
form of, 256.
memorandum of agreement or award may be recorded in, 28, 29, 148—150, 204, 205.
proceedings in County Court to be recorded in, 33, 221, 222.
recording of certificate in, 150, 209.
rectification of, 148—150.
application for, 149, 206.
form of notice of application, 248.
proceedings on application for, 149, 206.

SPECIAL RULES under Mining Regulation Acts, breach of, by workman, 15, 24—27.

SPECIAL WARRANT to register memorandum of agreement in Scotland, 149, 150.

STATION, when part of railway, 75, 76.

STATUTORY RULES, breach of, by workman, 15, 24—27.

STAY OF PROCEEDINGS,
against employer on payment into Court in arbitration between dependants, 135, 180.
for arbitration in test case, 36, 187, 188.
for refusal to submit to medical examination, 133, 211.
form of notice of application for, 252.
on acceptance of offer or sum paid into Court, 38, 191.
where arbitrator appointed by Judge, 40, 199.

STEVEDORES, liability of, 103, 104.

STRANGER: *see* THIRD PERSON.

SUB-CONTRACTING,
contractor may be joined with undertakers as respondents, 34, 178.
for work in agriculture, 158, 160.
liability of undertakers to workmen of contractor, 52, 53.
extends to damages payable independently of Acts, 54.
not liable if work merely ancillary or incidental, 53.
meaning of "merely ancillary or incidental," 55—57.
right of undertakers to indemnity against contractor, 53—55.
contractor may be brought in as third party, 57, 58, 192—194.
costs against third party, 58, 193, 194.
how far third party bound by award, 58, 193, 194.
notice of claim for indemnity must be given, 58, 59, 195.
procedure or claim for indemnity, 57, 58, 192—195.

SUB-CONTRACTING—*continued.*
sub-contractor not liable to pay compensation, 53, 54, 105, 106.
is not a workman, 108.

SUBMISSION,
of question of law for decision of County Court Judge, 142, 143.
to award, 37, 38, 189.
form of notice of, 237.

SUBSTITUTED SERVICE, 219, 220.

SUMMONS against insurers, form of, 253.

SUPERANNUATION ACT, scheme may be substituted for warrant under, 116, 117.

SUSPENSION,
of weekly payment for refusing medical examination, 137, 211.
form of application for, 252.

TAXATION OF COSTS,
as between party and party, 146, 147, 203.
person entitled to compensation and his solicitor, 153, 207, 208.

TEST CASE, stay of proceedings for trial of, 36, 187, 188.

THIRD PARTY,
award of indemnity against, 58, 59, 62, 194, 195.
claim for indemnity against, 57—59, 62, 192—195.
costs against, 58, 193, 194.
effect of non-appearance by, 57, 193.
form of notice of claim against, 240.
how far bound by arbitration, 58, 62, 193, 194.
may be given leave to take part in arbitration, 57, 58, 193.

THIRD PERSON,
liability of, to workman for damages preserved, 61, 62.
to indemnify employer, 61, 62.
receipt of compensation is a bar to action against, 61.
right of, to require submission to medical examination, 136, 137.

TIME,
for application to register agreement, 29, 149.
filing answer, 188.
notice of accident, 46, 47.
estoppel of employer from setting up limit of, 49, 50.
for claiming compensation, 44.
meaning of claim for compensation, 48, 49.
objection that proceedings out of, must be taken in answer, 50.

TOBACCO FACTORIES, 80.

TRAMWAYS belonging to mines, 97, 98.

TRANSFER OF PROCEEDINGS, 33, 60, 151, 215, 218.

TREASURY REGULATIONS as to medical referees, 261 *et seq.*

TUITION, value of, cannot be considered in estimating earnings, 124.

UNDERTAKERS,
bankruptcy or insolvency of, 59—61, 211—216.
employment must be by, 7, 8, 53, 54, 63.
liability of, to workmen of contractor, 52—57, 158.
of building, 101, 105—107.
dock, wharf, or quay, 84—86, 102—104.
engineering work, 101.
factory, quarry, or laundry, 101, 102.
machinery or plant, 84—86, 104.
mine, 101, 105.
railway, 101.
work in agriculture, 158, 160, 161.
procedure on claim for indemnity by, 57, 58, 62, 192—195.
right of, to indemnity against contractor, 53—55.
stranger, 61, 62.
right to indemnity, how determined, 31.
sub-contractors are not, 54.
the Crown as, 116, 117.
work "merely ancillary or incidental" to business of, 53, 55—57.

UNLOADING SHIP, machinery and plant used for purpose of, 84, 85, 94—96, 103, 104.

UNSUCCESSFUL ACTION,
against employer, right to compensation after, 22, 23, 41, 42.
against stranger, whether a bar to compensation, 61, 62.
costs of, may be deducted from compensation, 41, 42.

VERBAL AGREEMENT, recording memorandum of, 149.

WAGES, effect of continuing to pay, after accident, 20, 21, 28, 49, 50.

WAREHOUSE,
is a factory within the Acts, 76, 77, 84—89.
undertakers of, 84, 85.
what is a, 90, 91.

WEEKLY EARNINGS : *see* AVERAGE WEEKLY EARNINGS.

WEEKLY PAYMENT,
acceptance of, by injured workman, 23, 28, 29, 42.
sum offered as, 38, 190, 191.
amount of, how fixed, 119, 123—125.

WEEKLY PAYMENT—*continued.*
application for redemption of, 138, 139.
review of, 138, 200.
suspension of, 137, 211.
effect of employer making, 49, 50.
for total or partial incapacity, 119.
form of application for review or redemption of, 233.
notice of application for suspension of, 252.
insurers may be ordered to make, direct to workman, 60, 214.
may not be assigned or charged, 139.
be suspended for refusing medical examination, 137.
none for first two weeks, 119.
none may be awarded if full wages earned, 123.
redemption of, 138, 139.
sum awarded for redemption may not be assigned, 139.
review of, 21, 137, 138.
right of insurers to review or redemption of, 60, 138, 139, 214.
submission to award of, 37, 189, 190.
to be deducted from compensation in case of death, 118.
workman receiving, must submit to medical examination, 136, 137.

WHARF,
employment "on or about" a, 91—94.
is a factory, 76, 77, 84—89.
occupier of, 102—104.
undertakers of, 84, 85, 102—104.
what is a, 90.

WHITEWASHING, whether "repair," 73.

WILFUL MISCONDUCT, what is, 24: *and see* SERIOUS AND WILFUL MISCONDUCT.

WITNESSES, powers of arbitrator as to, 33, 142.

WORKMAN,
can only claim compensation against undertakers, 7, 8, 53, 54.
casual and daily, 20, 108.
choice of remedies of, 22, 23, 41, 42, 61, 62.
definition of, 107.
duty of, to submit to medical examination, 132, 133, 136, 137, 155.
in agriculture, 158—161.
employment of Crown, 116, 117.
includes apprentices, 107.
persons not engaged in manual labour, 107.
independent contractor is not a, 108.
must be disabled for two weeks, 20, 21, 124.
of contractor, rights of, against undertakers, 52—57.
piece-worker may be a, 108, 109.
rights of, against insurers on bankruptcy, &c., of employer, 59—61, 211—216.

WORKMAN—*continued.*
seaman, 109, 110.
who is a, 107—110.

WORKMEN'S COMPENSATION RULES, 177 *et seq.*
Interpretation Act applies to, 33, 177.
power to make, 144, 145, 148, 151, 152.
regulate procedure on arbitration in County Court, 142.
to be read and construed with County Court Rules, 177.

THE END.

BRADBURY, AGNEW, & CO. LD., PRINTERS, LONDON AND TONBRIDGE.

Costs.—JOHNSON. Bills of Costs in the High Court of Justice and Court of Appeal, in the House of Lords and the Privy Council, Tables of Fees, Conveyancing Costs, &c., &c. By HORACE MAXWELL JOHNSON. 2nd Edit. 35*s*. 1901.

County Courts.—The Annual County Courts Practice; containing the Jurisdiction and Practice under the County Courts Act, the Bills of Exchange Act, and the Employers' Liability Act, and the Statutes, Rules of Practice, Forms and Tables of Fees and Costs. By His Honour Judge SMYLY. 2 vols. 25*s*.

The Law relating to County Court Appeals, Mandamus, Prohibition, and Certiorari. By D. CHAMIER. 10*s*. 1896.

Criminal Law.—ARCHBOLD'S (J. F.) Pleading and Evidence in Criminal Cases, with the Statutes and Precedents of Indictments, by Sir J. JERVIS. 22nd Ed. 1*l*. 11*s*. 6*d*. 1900.

CHITTY'S Collection of Criminal Acts. By W. F. C[illegible] 10*s*. 1894.

RUSSELL ([illegible] nes and Misdemeanou[illegible] *l*. 15*s*. 6*d*. 1896.

ROSCOE'S [illegible] w of Evidence in Criminal[illegible] By A. P. KEEP. 31*s*. 6*d*. 1898.

Designs.—EDM[illegible] Copyright in Designs. Being [illegible] Complete Treatise on the Law and Practice in the Courts and at the Patent Office. By LEWIS EDMUNDS, D.Sc., and W. M. SLADE. 15*s*. 1895.

Digest.—Digest of English Case Law to the end of 1897. 16 vols. 20*l*.

Continued annually.

A Digest of Cases, Overruled, &c., in the English Courts to the end of 1899.

In Preparation.

Divorce.—BROWNE & POWLES' Law and Practice in Divorce and Matrimonial Causes; with the Statutes, Rules, Fees and Forms. 6th Ed. 25*s*. 1897.

Easements.—GALE on Easements. 7th Edition. By G. CAVE. 25*s*. 1899.

Ecclesiastical Law. — PHILLIMORE'S Ecclesiastical Law of the Church of England. 2nd Ed. 3*l*. 3*s*. 1895.

Ejectment.—WILLIAMS (J. H.) & YATES' (W. B.) Law of Ejectment. 16*s*. 1894.

Elections. — JELF'S Corrupt Practices Acts. A Treatise on Corrupt Practices at Elections. By E. A. JELF. 2nd Ed. 5*s*. 1895.

Equity.—WHITE & TUDOR'S Selection of Leading Cases in Equity, with Notes. 7th Edition. 2 vols. 3*l*. 15*s*. 1897.

Evidence.—TAYLOR'S (PITT) Treatise on the Law of Evidence, as administered in England and Ireland. By His Honour Judge PITT-TAYLOR. 9th Ed. In 2 vols. 3*l*. 3*s*. 1895.

BEST'S Principles of Evidence. With Elementary Rules for conducting the Examination and Cross-Examination of Witnesses. 8th Edit. By J. M. LELY. With Notes to American and Canadian Cases by C. F. CHAMBERLAYNE, of the Boston Bar. 30*s*. 1893.

Executors.—WILLIAMS' (Sir E. V.) Treatise on the Law of Executors and Administrators. 9th Edition. 3*l*. 16*s*. 1893.

Forms.—ROUSE'S Practical Man. 17th Edit. 10*s*. 6*d*. 1900.

Guide for Articled Clerks.—A new Guide for Articled Clerks, containing the most recent Regulations and Examination Papers. By H. W. STIFF, Solicitor. 6*s*. 1895.

Guide to the Bar.—A New Guide to the Bar, containing the most recent Regulations and Examination Papers. By M.A. and LL.B., Barristers-at-Law. 5*s*. 1896.

Horses.—OLIPHANT'S Law of, including the Law of Innkeepers, Veterinary Surgeons, &c., and of Hunting, Racing, Wagers and Gaming. 5th Ed. By CLEMENT ELPH. LLOYD, B.A., Oxon. 21*s*. 1896.

Index of Cases Judicially Noticed, 1865-90.—By G. J. TALBOT and H. FORT. 25*s*. 1891.

Inebriates.—WYATT PAINE on the Inebriates Acts, 1879-98. With Notes, Forms, Rules, &c. 6*s*. 1899.

International Law.—WESTLAKE, J., Q.C., on Private International Law. 3rd Edition. 16*s*. 1890.

[illegible] BABÉ (M.) on Inter[illegible]gh Court of Justice and [illegible]th Forms. 3rd Edit. 6*s*. 1900.

Ju[illegible]e

[illegible] RAM'S Justices' Note Boo[illegible] 10*s*. 6*d*. 1900.

Landlord and Tenant.—WOODFALL'S Law of Landlord and Tenant. 16th Edit. By J. M. LELY. 38*s*. 1898.

Law Dictionary.—The Judicial Dictionary of Words and Phrases Judicially Interpreted. By F. STROUD. 30*s*. 1890.

BOUVIER'S Encyclopedic Dictionary of English and American Law Terms and Phrases. New Edit. 2 vols. 2*l*. 10*s*. net. 1897-8.

Leading Cases. — SMITH'S Leading Cases in Various Branches of the Law, with Notes. 10th Edit. 2 vols. 3*l*. 10*s*. 1896.

WHITE & TUDOR'S Leading Cases in Equity. A Selection of Leading Cases in Equity, with Notes. 7th Ed. 2 vols. 3*l*. 15*s*. 1897.

Licensing.—The Law and Practice of Licensing, with Statutes and Forms. By G. J. TALBOT, Bar.-at-Law. 7*s*. 6*d*. 1896.

MONTGOMERY'S Licensing Laws. 2nd Edit. 18*s*. 1900.

Local Government and Taxation. —An Outline of, in England and Wales, excluding London. By R. S. WRIGHT and H. HOBHOUSE. 2nd Ed. 7*s*. 6*d*. 1894.

Lunacy.—POPE'S Law and Practice of Lunacy. 2nd Edition. By J. H. BOOME, of the Middle Temple, and V. DE S. FOWKE, of Lincoln's Inn. 21*s*. 1892.

Maxims.—BROOM'S Selection of Legal Maxims, Classified and Illustrated. 7th Edit. 28*s*. 1900.

Mercantile and Maritime Law.—SMITH'S (J. W.) Compendium of Mercantile Law. 10th Ed. By JOHN MACDONELL, M.A. 2 vols. 2*l*. 2*s*. 1890.

Merchant Shipping.—A Treatise on the Law of Merchant Shipping. 4th Edit. By DAVID MACLACHLAN, M.A. 2*l*. 2*s*. 1892.

MARSDEN'S Digest of Cases relating to Shipping, Admiralty, and Insurance Law, from the reign of Elizabeth to the end of 1897. 30*s*. 1899.

BOSTON COLLEGE
3 9031 01356738 3

Merchant Shipping—*contd.*

PULLING'S (A.) Shipping Code; being the Merchant Shipping Act, 1894. 7*s.* 6*d.* net. 1894.

Mines, Minerals.—A Treatise on the Law of Mines, Quarries, and Minerals. By R. F. MACSWINNEY. 2nd Ed. 2*l.* 1897.

Mortgage.—ROBBINS' (L. G. G.) Treatise on Mortgages, Pledges, and Hypothecations. 3*l.* 1897.

Nisi Prius.—ROSCOE'S (H.) Digest of the Law of Nisi Prius Evidence. 17th Edition. By M. POWELL. 2 vols. 2*l.* 2*s.* 1900.

Parish Law. — Steer's Parish Law. 6th Ed. 20*s.* 1899.

Partnership.—A Treatise on the Law of Partnership. By the Right Hon. Sir NATHANIEL LINDLEY, Knt., Master of the Rolls. Sixth Edition. By W. B. LINDLEY, M.A. 35*s.* 1893.

FOWKE & HENDERSON'S Partnership between Solicitors. A Collection of Precedents. By V. DE S. FOWKE and F. B. HENDE[illegible] 13 vols. citors' [illegible] Supple- 6*s.*

Patents [illegible] By Sir tice re[illegible] A. B. tions. 1896.

Person [illegible] (R. dern [illegible] w and By J. [illegible] ing the 18*s.* [illegible] rd Ed. KELKE' [illegible] 1891. Law. [illegible] n the WILLIA[illegible] gs and of Pe[illegible] . 12*s.* dents [illegible] 1894.

Probat [illegible] Title. Treat[illegible] 1896. the C[illegible] CLERK Non-[illegible] d. 25*s.* Editi[illegible] 1896. 30*s.*

Railwa [illegible] ported 15*l.* [illegible] etween ; with

Real P [illegible] USTEN of Re[illegible] 1893. for t[illegible] Trade By t[illegible] handise The [illegible] . 1894. LL.B. [illegible] w and GOODE[illegible] WELL. with [illegible] 1901. dents [illegible] actical PHIN[illegible] h Edit. and L[illegible] 1898. and [illegible] ustees' KELKE[illegible] ractice, of R[illegible] cedure, Stud[illegible] 1898. 2nd [illegible] SHELF[illegible] ıe Law Ed. [illegible] . 1894. HAR[illegible]

Receivers.—A Treatise on the Law and Practice as to Receivers appointed by the Court of Chancery. By W. W. KERR. 4th Edition. 10*s.* 1900.

Wills. 5th Edition. 2 vols. 3*l.* 10*s.* 1893.

HAYES (W.) and JARMAN'S (T.) Concise Form of Wills; with Practical Notes. 11th Ed. 21*s.* 1898.

HD
7816
G7B6

BOSTON COLLEGE LIBRARY
SCHOOL OF BUSINESS ADMIN.
CHESTNUT HILL, MASS.

Books may be kept for two weeks and may be renewed for the same period, unless reserved.

Two cents a day is charged for each book kept overtime.

If you cannot find what you want, ask the Librarian who will be glad to help you.

The borrower is responsible for books drawn on his card and for all fines accruing on the same.